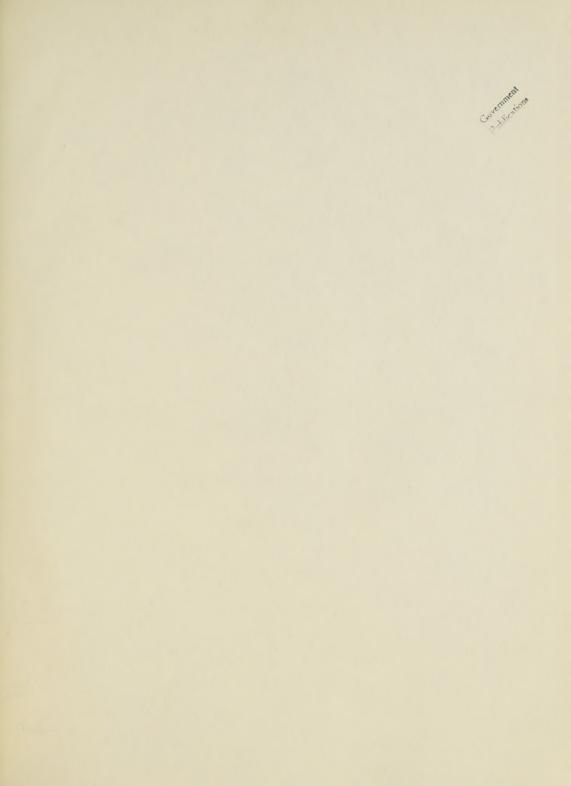






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APRIL, 1965 - MAR 1966



# **ONTARIO LABOUR RELATIONS BOARD**

HD 8109 05A5 1965/66



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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

### DURING APRIL 1965

#### BARGAINING AGENTS CERTIFIED DURING APRIL

No VOTE CONDUCTED

9679-64-R: United Packinghouse, Food and Allied Workers (Applicant) v. Burns & Co. Limited (Respondent).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT GENERAL MANAGER, SUPERINTENDENT, DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER AND SALES STAFF." (63 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"WE FURTHER FIND ON THE BASIS OF ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND THE SUBMISSIONS OF THE PARTIES WITH RESPECT THERETO. THAT DAVID W. HELDMAN. A PERSON CLASSIFIED BY THE RESPONDENT AS SENIOR ACCOUNTANT OR CHIEF ACCOUNTANT EXERCISES MANA-GERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS EXCLUDED FROM THE BARGAINING UNIT. !N ARRIVING AT THIS DECISION WE HAVE TAKEN INTO CONSIDERATION THE EVI-DENCE THAT AT THE TIME OF MR. DAVID W. HELDMAN'S PROMOTION TO THIS POSITION. AN OFFICIAL NOTICE OF HIS APPOINTMENT WAS PREPARED WHERE, N HIS PERSONAL HISTORY WAS SET FORTH AND THIS NOTICE APPEARED ON THE BULLETIN BOARDS AND WAS ALSO SENT TO DEPARTMENT HEADS. IN ADDITION, MR. DAVID W. HELDMAN IS RESPONSIBLE FOR THE PREPARATION OF THE FINANCIAL STATEMENTS AND THE BUDGETS FOR THE RESPONDENT, IS ONE OF THE CO-SIGNERS OF CHEQUES IN AMOUNTS OF EXCESS OF \$400.00 WHERE TWO SIGNATURES ARE REQUIRED AND ALSO HAS AUTHORITY TO ISSUE CHEQUES ON HIS OWN SIGNATURE FOR AMOUNTS UNDER \$400.00. AS CHIEF ACCOUNTANT HE HAS AUTHORITY TO ISSUE THE SALARY CHEQUES ON HIS OWN SIGNATURE AND IN FACT HAS DONE SO. MR. DAVID W. HELDMAN IS NOT ENTITLED TO OVER-TIME PAY AS ARE THE EMPLOYEES IN THE BARGAINING UNIT. INCLUD-ING THE JUNIOR ACCOUNTANT WHO WORKS UNDER HIS DIRECTION. AND HE IS NOT ENTITLED TO SHARE IN THE "BONUS PLAN" WHICH IS AVAILABLE TO EMPLOYEES IN THE BARGAINING UNIT. HE ALSO ACTS AS AN INTERMEDIARY BETWEEN DEPARTMENT HEADS WITH RESPECT TO THE TRANSFER OF STAFF BE-TWEEN DEPARTMENTS. THE WITNESS ALSO REGULARLY ATTENDS MANAGEMENT MEETINGS WHICH ARE ATTENDED BY ALL MEMBERS OF MANAGEMENT INCLUDING THE PERSONNEL MANAGER.

WHILE IT IS ACKNOWLEDGED THAT THERE ARE CERTAIN OTHER MANAGERIAL FUNCTIONS SUCH AS HIRING AND FIRING WHICH ARE EXERCISED BY OTHER MEMBERS OF MANAGEMENT THIS FACT IN NO WAY DETRACTS FROM THE MANAGERIAL FUNCTIONS WHICH ARE REGULARLY EXERCISED BY WR. DAVID W. HELDMAN.

IN VIEW OF THE FACT THAT MR. DAVID W. HELDMAN IS ONE OF THREE PERSONS WHO PARTICIPATED IN THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION TO THIS APPLICATION BY SOME OF THE EMPLOYEES OF THE RESPONDENT AND THE FACT THAT THE BOARD HAS FOUND HIM TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

ON THE EVIDENCE BEFORE ME I DO NOT FIND THAT DAVID W. HELDMAN EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT. I WOULD THEREFORE RELIST THE CASE FOR HEARING TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION."

9691-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Ford Motor Company of Canada, Limited (Respondent).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT THE FOLLOWING:-

- (1) ALL EMPLOYEES COMING WITHIN THE BARGAINING UNIT FOR WHICH LOCAL 584 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA IS THE BARGAINING AGENT:
- (2) ALL SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR;
- (3) CONFIDENTIAL SECRETARIES TO DEPARTMENT MANAGERS AND THOSE ABOVE THE RANK OF DEPARTMENT MANAGER;
- (4) QUALIFIED ENGINEERS DOING ENGINEERING WORK;
- (5) PLANT PROTECTION OFFICERS;
- (6) EMPLOYEES EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS;
- (7) EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT;
- (8) EMPLOYEES OF THE OPERATIONS STANDARDS AND SERVICE DEPARTMENT;
- (9) ALL FIELD PERSONNEL AND FIELD PERSONNEL TRAINEES OF THE REGIONAL SALES OFFICE
- (10) EMPLOYEES OF THE TRACTOR SALES AND SERVICE DEPARTMENT;

(11) THE FINANCIAL ANALYST, DATA CONTROL ANALYST, DEPOT CO-ORDINATOR, ACCOUNTANT AND THE INVENTORY ANALYST IN PROGRAMMING AND PARTS SUPPLY." (148 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES AND THE FINDINGS OF THE BOARD ON THE EVIDENCE IN THE EXAMINER'S REPORTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"WE HAVE CONSIDERED THE ARGUMENTS OF COUNSEL FOR EACH OF THE PARTIES ON THE EVIDENCE AND WITH RESPECT TO THE PRINCIPLES AND CRITERIA WHICH THEY ARGUE ARE APPLICABLE IN THE DETERMINATION OF WHETHER OR NOT THE PERSONS IN DISPUTE EXERCISE MANAGERIAL FUNCTIONS. ON THE BASIS OF THE EVIDENCE AS SET FORTH IN THE EXAMINER'S FIRST AND SUPPLEMENTARY REPORTS, WE ARE CONSTRAINED TO FIND THAT C.E. GREEN, JAMES M. REYNOLDS, JAMES PITMAN, E. M. ZAVITZ AND GRLAND MCGILL. ALL DESIGNATED AS PRICING ANALYSTS; STEVEN KOLOFF, DESIGNATED AS A CO-ORDINATOR OF COMPETITIVE PRICING; J. W. MILLS, DESIGNATED AS AN ACCOUNTING CLERK; AND JOE C. MALONEY, DESIGNATED AS A SURPLUS DISPOSAL CO-ORDINATOR, DO NOT EXERCISE MANAGERIAL FUNCTIONS. THESE PERSONS ARE, THEREFORE, INCLUDED IN THE BARGAINING UNIT.

WE FIND THAT DON PARISH, INVENTORY ANALYST IN PROGRAMMING AND PARTS SUPPLY, DOES EXERCISE MANAGERIAL FUNCTIONS AND IS. ON THAT ACCOUNT, EXCLUDED FROM THE BARGAINING UNIT."

9904-64-R: North Bay General Workers! Union Local 1603, Canadian Labour Congress (Applicant) v. Gravell Brick Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN. PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(22 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 50 ).

9907-64-R: International Hod Carriers Building and Common Labourers Union .ocal 527 (AFL-CIO) (CLC) (APPLICANT) v. Minute Car Wash (Gttawa; Limited (Respondent,

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT...

(AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT 12 NAMED EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT 2 NAMED PERSONS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND THAT 2 OTHER NAMED EMPLOYEES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

9925-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PORT COLBORNE AND HUMBERSTONE COMMUNITY CENTRE BOARD (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 52)

9951-64-R: Canadian Union of Public Employees (Applicant) v. St. Thomas Public Library Board (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT DEPUTY LIBRARIAN, PERSONS ABOVE THE RANK OF DEPUTY LIBRARIAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT TEKLA TAMMIST DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION  $1\ (3)\ (B)$  OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT MARILYN NETHERCOTT IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

BOARD MEMBER H.F. IRWIN WHILE NOT DISSENTING SAID:-

"I CONCUR WITH THE DECISION OF THE MAJORITY EXCEPT WITH RESPECT TO THE DECLARATION CONCERNING MARILYN NETHERCOTT. HAVING REGARD TO THE FACT THAT MRS. NETHERCOTT IS THE SECRETARY TO THE CHIEF EXECUTIVE OFFICER OF THE LIBRARY WHO INEVITABLY WILL HAVE RESPONSIBILITIES RELATING TO LABOUR RELATIONS, I WOULD HAVE EXCLUDED MRS. NETHERCOTT FROM THE BARGAINING UNIT ON THE GROUNDS THAT IN THE PERFORMANCE OF HER DUTIES AS SECRETARY TO THE CHIEF LIBRARIAN SHE WILL HAVE ACCESS TO CONFIDENTIAL MATTERS RELATING TO LABOUR RELATIONS."

10009-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Canadian Motor Lamp Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTER LAKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(129 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FURTHER FINDS THAT C. L. HEIMBECKER EXERCISES MANAGERIAL FUNCTIONS AND IS EXCLUDED FROM THE BARGAINING UNIT,

and that L. E. McDevitt and H. C. Madigan do not exercise managerial functions and are included in the bargaining unit."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"I DISSENT. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT I WOULD HAVE FOUND THAT L. E. McDevitt and H. C. Madigan exercise managerial functions and accordingly I would have excluded them from the bargaining unit."

10011-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, Local Union No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. PARNELL VENDING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE OF JOHN CALCUTT, WHO APPEARED IN SUPPORT OF THE PETITION, IS THAT HE FIRST SAW THE NOTICE OF THE APPLICANT UNION'S APPLICATION FOR CERTIFICATION ON THE COMPANY BULLETIN BOARD ON THE AFTERNOON OF FEBRUARY 16TH, 1965. HIS TESTIMONY IS THAT HE THERE-UPON WENT TO JACK CORBETT, THE SALES MANAGER OF THE RESPONDENT, AND ASKED HIM WHAT THE NOTICE MEANT. CALCUTT'S EVIDENCE IS THAT CORBETT SAID THAT HE COULD NOT HELP HIM (CALCUTT). CALCUTT STATED THAT LATER THAT DAY, AFTER WORKING HOURS, HE COMMUNICATED WITH A FIRM OF SOLICI-TORS AND WAS ULTIMATELY REFERRED TO MR. P. M. SISKIND AT ANOTHER LAW FIRM. CALCUTT MADE ARRANGEMENTS TO SEE Mr. SISKIND IN HIS OFFICE THE FOLLOWING MORNING. ON THE EVENING OF FEBRUARY 16TH CALCUTT TESTIFIED THAT HE TELEPHONED CORBETT AND ASKED HIM FOR THE FOLLOWING DAY OFF FOR PERSONAL REASONS. CALCUTT'S EVIDENCE IS THAT CORBETT GRANTED HIS REQUEST WITHOUT MAKING ANY INQUIRY AS TO THE REASON FOR HIS ABSENCE. ON THE MORNING OF FEBRUARY 17TH CALCUTT TESTIFIED HE ATTENDED AT THE OFFICE OF MR. SISKIND WHO PREPARED THE PETITION AND HAD IT TYPED IN HIS OFFICE. CALCUTT IMMEDIATELY PROCEEDED TO APPROACH HIS FELLOW EMPLOYEES TO SECURE SIGNATURES ON THE PETITION. HIS EVIDENCE IS THAT THREE OF THE SIGNATURES WERE SECURED FROM EMPLOYEES WHILE THEY WERE AT WORK AND THE REMAINDER WERE SECURED AT THE HOMES OF THE EMPLOYEES AFTER WORKING HOURS. CALCUTT TESTIFIED THAT NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN ANY OF THE SIGNATURES WERE SECURED AND THAT HE HAD NOT RECEIVED ANY ASSISTANCE FROM MANAGEMENT WITH RESPECT TO THE PET-ITION.

THE EVIDENCE BEFORE US IS THAT ON THE EVENING OF THURSDAY,
FEBRUARY 11th, 1965 THERE WAS A MEETING OF THE EMPLOYEES OF THE RESPONDENT AND THE REPRESENTATIVES OF THE APPLICANT UNION. DOUGLAS
PARNELL, PRESIDENT OF THE RESPONDENT COMPANY, TESTIFIED THAT HE WAS

AWARE, PRIOR TO THE EVENT, OF THE SCHEDULED UNION MEETING. HIS EVIDENCE IS THAT HE INSTRUCTED JACK CORBETT TO SPEAK TO EACH EMPLOYEE AND INFORM THEM OF THEIR RIGHTS WITH REGARD TO THE UNION AND ALSO THE POSITION OF THE COMPANY. THE EVIDENCE OF FREDERICK WOOD IS THAT CORBETT APPROACHED HIM ON THE AFTERNOON OF FEBRUARY 11TH AND TOLD HIM THAT IT HAD COME TO HIS (CORBETT'S) ATTENTION THAT THERE WAS A UNION MEETING THAT EVENING. CORBETT TOLD HIM THAT HE COULD MAKE HIS OWN DECISION WITH REGARD TO THE UNION BUT ADVISED HIM NOT TO DO ANYTHING FOOLISH WHEN HE WAS AT THE UNION MEETING. FRANK HURST TESTIFIED THAT ON THE MORNING OF FEBRUARY 11TH CORBETT APPROACHED HIM AND STATED THAT HE HAD HEARD THAT THERE WAS A MEETING OF THE UNION SCHEDULED FOR THAT NIGHT. CORBETT SAID THAT HE COULD NOT ADVISE HURST ONE WAY OR THE OTHER BUT TOLD HIM TO THINK ABOUT WHAT HE WAS GOING TO DO. THERE IS EVIDENCE THAT CORBETT APPROACHED AT LEAST THREE OTHER EMPLOYEES IN A SIMILAR MANNER. HAVING REGARD TO THE EVIDENCE OF THE INSTRUCTIONS GIVEN BY PARNELL TO CORBETT. IT IS REASONABLE TO ASSUME THAT CORBETT SPOKE TO ALL THE EMPLOYEES.

JOHN WALTERS TESTIFIED THAT PARNELL APPROACHED HIM ON THE MORNING OF FRIDAY, FEBRUARY 12TH WHEN HE (WALTERS) WAS WORKING AT THE PREMISES OF THE NORTHERN ELECTRIC COMPANY LIMITED. WALTERS' EVIDENCE IS THAT PARNELL ASKED HIM IF HE HAD GONE TO THE UNION MEETING ON THE PREVIOUS NIGHT, TO WHICH WALTERS REPLIED IN THE NEGATIVE. WALTERS' TESTIMONY IS THAT PARNELL SAID WORDS TO THE EFFECT THAT HE (PARNELL) SUPPOSED SOME OF THE BOYS HAD SIGNED CARDS BUT SINCE WALTERS WAS NOT THERE HE WOULD NOT KNOW. WALTERS FURTHER TESTIFIED THAT, IN FACT, HE HAD ATTENDED THE UNION MEETING. HIS EVIDENCE IS THAT HE WENT TO PARNELL'S OFFICE ON THE AFTERNOON OF FEBRUARY 12TH AND CONFESSED THAT HE (WALTERS) HAD LIED TO PARNELL THAT MORNING. PARNELL'S EVIDENCE ESSENTIALLY SUBSTANTIATES THAT OF WALTERS.

HURST TESTIFIED THAT A NOTICE OF A MEETING BETWEEN THE EMPLOYEES AND MANAGEMENT SCHEDULED FOR MARCH 3RD, 1965 HAD BEEN POSTED ON THE COMPANY BULLETIN BOARD PRIOR TO THE WEEK OF FEBRUARY 8TH. HIS EVIDENCE IS THAT ON THE MORNING OF FEBRUARY 12TH, 1965 THE NOTICE OF THE MARCH 3RD MEETING DISAPPEARED AND A NEW NOTICE APPEARED ON THE BULLETIN BOARD CALLING A MEETING OF THE VENDING EMPLOYEES OF THE RESPONDENT FOR MONDAY, FEBRUARY 15TH, 1965 AT 8 P.M.

BOTH WOOD AND HURST TESTIFIED THAT ON MONDAY EVENING, PRIOR TO THE SCHEDULED MEETING AT 8 p.m., FIVE OF THE EMPLOYEES WHO HAD SIGNED UNION CARDS HAD MET AT THE HOME OF ONE OF THE EMPLOYEES.
BOTH WOOD AND HURST STATED THAT THEY THOUGHT THAT THE PURPOSE OF THE MEETING CALLED BY THE COMPANY WAS RELATED TO THE UNION'S ORGANIZING ACTIVITIES. THEIR EVIDENCE IS THAT AT THE EARLIER MEETING THE EMPLOYEES PRESENT AFFIRMED THEIR SUPPORT FOR THE UNION. THE FIVE EMPLOYEES THEN WENT TO THE MEETING AS A GROUP.

THE MEETING ON THE EVENING OF FEBRUARY 15TH WAS ATTENDED BY PARNELL, CORBETT AND THE REMAINDER OF THE SUPERVISORY STAFF AND BY ALL OF THE VENDING EMPLOYEES. THE MEETING WAS HELD IN THE OPEN OFFICE AREA AT THE RESPONDENT'S PREMISES. PARNELL SAT AT A DESK IN FRONT OF THE EMPLOYEES. THERE IS GENERAL AGREEMENT AMONG THE WITNESSES THAT PARNELL OPENED THE MEETING BY READING A NUMBER OF SECTIONS FROM THE LABOUR RELATIONS ACT. (PARNELL TESTIFIED THAT HE READ ALOUD SECTIONS 3. 4 AND 48 OF THE LABOUR RELATIONS ACT). THE EVIDENCE OF HURST IS THAT PARNELL THEN EXPLAINED THAT THERE COULD BE NO COERCION OF THE EMPLOYEES BY EITHER THE COMPANY OR THE UNION TO JOIN OR NOT TO JOIN THE UNION. PARNELL AT THAT POINT ASKED IF THERE WERE ANY QUESTIONS. AFTER A SILENCE WHICH APPEARS TO HAVE LASTED FOR SOME TIME PARNELL SAID THAT HE AND THE MEMBERS OF THE SUPERVISORY STAFF WOULD LEAVE AND ALLOW THE EMPLOYEES TO HAVE A DISCUSSION AMONG THEMSELVES. PARNELL SAID THAT HE WOULD RETURN IN AN HOUR. THE TESTIMONY OF HURST IS THAT AFTER PARNELL LEFT. CALCUTT ASKED THE EMPLOYEES WHAT GRIEVANCES THEY HAD TO CAUSE THEM TO BRING IN THE UNION. SOME DISCUSSION ENSUED AMONG THE EMPLOYEES CONCERNING THE UNION. WHEN PARNELL RETURNED. APPROXIMATELY AN HOUR LATER, HIS TESTIMONY IS THAT HE ASKED THE MEN WHETHER THEY HAD ANY QUESTIONS. THE EVIDENCE OF WOOD, HOWEVER, IS THAT WHEN PARNELL RETURNED HE ASKED THE EMPLOYEES IF THEY HAD COME TO ANY DECISION. ACCORDING TO THE TESTIMONY OF HURST, PARNELL ASKED WHAT THE EMPLOYEES WANTED TO DO. WOOD TESTIFIED THAT AT THIS POINT CALCUTT ASKED THE MEN IF THEY HAD ANY GRIEVANCES THAT THEY WANTED TO BRING UP AND TOLD THEM THAT PARNELL WANTED TO HEAR ANY GRIEVANCES. A DISCUSSION OF SOME CONSIDERABLE LENGTH TOOK PLACE AMONG THE EMPLOYEES AND PARNELL. DURING THE DISCUSSION HURST'S EVIDENCE IS THAT SOME REFERENCE WAS MADE TO THE POSSIBILITY OF A GRIEVANCE OR SHOP COMMITTEE OR EVEN ANOTHER UNION. THERE WAS SOME CONFLICT IN THE EVIDENCE AS TO WHO RAISED THE MATTER OF A GRIEVANCE OR SHOP COMMITTEE. BOTH WOOD AND HURST TESTIFIED THAT PARNELL HAD SAID TO THE EMPLOYEES THAT IF A UNION WAS BROUGHT IN IT WOULD BE A THIRD PARTY THAT WOULD CREATE A BARRIER BETWEEN THE EMPLOYEES AND MANAGEMENT. THERE WAS ALSO SOME DISCUSSION AS TO THE PROSPECT OF A FURTHER MEETING WITH PARNELL TO DISCUSS FURTHER, THE GRIEVANCES BROUGHT UP BY THE EMPLOYEES. THE EVIDENCE IS THAT AS A RESULT OF AN EXCHANGE OF CONVERSATION BETWEEN BURST AND ANOTHER EMPLOYEE, PARNELL ASKED IF ANY EMPLOYEES HAD SIGNED MEMBERSHIP CARDS, TO WHICH HURST REPLIED IN THE AFFIRMATIVE. THE EVIDENCE IS THAT, AT THIS POINT, PARNELL CONCLUDED THE MEETING AND ANNOUNCED THAT THERE COULD BE NO FURTHER MEETINGS. THE MEETING LASTED FROM 8 P.M. TO 11:40 P.M. AT ITS CONCLUSION ALL THE EMPLOYEES LEFT TOGETHER, WITH THE EXCEPTION OF CALCUTT AND SCARLETT WHO REMAINED BEHIND WITH PARNELL.

CALCUTT TESTIFIED THAT HE HAD TRIED TO HAVE A CONVERSATION WITH PARNELL AFTER THE MEETING BUT THAT PARNELL WOULD NOT SAY ANY—THING. CALCUTT'S EVIDENCE IS THAT ON THE FOLLOWING MORNING, HOWEVER, HE HAD GONE TO SEE PARNELL IN HIS OFFICE AND HAD A CONVERSATION WITH HIM FOR APPROXIMATELY HALF AN HOUR. CALCUTT STATED THAT HE COULD NOT REMEMBER WHAT WAS SAID IN THE CONVERSATION BETWEEN HIMSELF AND PARNELL ON THAT OCCASION EXCEPT THAT THERE WAS SOME DISCUSSION OF THE

UNION AND THE MEETING WHICH HAD TAKEN PLACE THE NIGHT BEFORE. HE DID ADMIT THAT HE HAD ASKED PARNELL WHAT HE (CALCUTT) SHOULD DO TO STOP THE UNION APPLICATION. CALCUTT COULD NOT RECALL PARNELL'S REPLY. PARNELL ALSO TESTIFIED THAT HE COULD NOT REMEMBER WHAT WAS SAID DURING HIS CONVERSATION WITH CALCUTT ON THE TUESDAY MORNING. PARNELL'S ONLY EVIDENCE AS TO THE CONVERSATION WAS THAT CALCUTT WAS CONFUSED AS TO WHAT WAS GOING ON AND WAS TRYING TO GET SOME UNDERSTANDING OF THIS SITUATION.

IT IS CLEAR THAT THE MANAGEMENT OF THE RESPONDENT WAS FULLY AWARE OF THE ORGANIZING ACTIVITIES OF THE APPLICANT UNION DURING THE WEEK COMMENCING ON FEBRUARY 8TH, 1965. FURTHER, WHILE PARNELL TESTIFIED THAT HE DID NOT KNOW THAT AN APPLICATION FOR CERTIFICATION HAD BEEN MADE UNTIL THE AFTERNOON OF FEBRUARY 16TH, WHEN HE RECEIVED THE BOARD'S NOTICE, THE EVIDENCE STRONGLY SUGGESTS THAT PRIOR TO THE TIME THAT NOTICE OF THE MEETING OF FEBRUARY 15TH WAS POSTED, HE MUST HAVE ANTICIPATED THAT A CERTIFICATION APPLICATION WOULD BE MADE BY THE UNION IN THE IMMEDIATE FUTURE. ALSO, DESPITE PARNELL'S TESTIMONY THAT HE DID NOT KNOW THAT ANY OF THE EMPLOYEES HAD JOINED THE UNION PRIOR TO THE FEBRUARY 15TH MEETING, HAVING REGARD TO THE EVIDENCE RE-LATING TO HIS CONVERSATION WITH WALTERS ON FEBRUARY 12TH, PARNELL, AT THE LEAST, MUST HAVE SUSPECTED BEFORE THE FEBRUARY 15TH MEETING THAT SOME OF THE EMPLOYEES HAD JOINED THE UNION. THE REVELATION BY HURST OF THE FACT THAT EMPLOYEES HAD ALREADY JOINED THE UNION COULD NOT HAVE COME AS ANY SURPRISE TO PARNELL.

PARNELL TESTIFIED THAT HIS SOLE PURPOSE IN CALLING THE MEETING ON FEBRUARY 15TH WAS TO LET THE EMPLOYEES KNOW THEIR RIGHTS AND THE POSITION OF THE COMPANY. WE NOTE, HOWEVER, THAT PARNELL'S EVIDENCE IS THAT PRIOR TO THE UNION MEETING ON FEBRUARY 11TH, HE HAD INSTRUCTED CORBETT TO CONVEY THE SAME INFORMATION TO EACH EMPLOYEE INDIVIDUALLY. FURTHER, IT IS CLEAR FROM THE EVIDENCE THAT ONLY A SMALL PORTION OF THE THREE AND A HALF HOUR MEETING ON THE EVENING OF FEBRUARY 15TH WAS DEVOTED TO THE ALLEGED PURPOSE OF THE MEETING. THE EVIDENCE REVEALS THAT AT THE MEETING PARNELL GAVE POSITIVE ENCOURAGEMENT TO THE EM-PLOYEES TO EXPRESS ANY GRIEVANCES OR COMPLAINTS, ALTHOUGH IT APPEARS THAT SUCH AN INVITATION HAD NOT BEEN EXTENDED TO THE EMPLOYEES AT ANY PREVIOUS MEETINGS WITH MANAGEMENT. WE NOTE THAT AT THE OUTSET OF THE MEETING PARNELL RECITED PROVISIONS OF THE LABOUR RELATIONS ACT AS TO THE RIGHT OF THE EMPLOYEE AND EMPLOYER WITH REGARD TO TRADE UNION. DESPITE THIS FACT, HAVING REGARD TO ALL THE EVIDENCE RELATING TO THE SUBSEQUENT CONDUCT OF THE MEETING, WE ARE OF THE OPINION THAT PARNELL'S REAL MOTIVE IN CALLING THE MEETING ON FEBRUARY 15TH WAS TO TRY TO IN-FLUENCE HIS EMPLOYEES AGAINST THE APPLICANT UNION.

WE WOULD ALSO REFER TO THE CONDUCT OF JOHN CALCUTT WHO GAVE EVIDENCE IN SUPPORT OF THE PETITION. WHILE CALCUTT HAD NO DIFFICULTY RECALLING THE EVENTS RELATING TO THE PREPARATION AND CIRCULATION OF THE PETITION, HE COULD REMEMBER LITTLE OF HIS HALF HOUR CONVERSATION WITH PARNELL ON THE MORNING OF FEBRUARY 16TH. CALCUTT DID ADMIT IN CROSS-EXAMINATION, HOWEVER, THAT THEY HAD DISCUSSED THE UNION AND THE MEETING THE PREVIOUS EVENING. CALCUTT ALSO ADMITTED THAT HE HAD ASKED PARNELL WHAT HE COULD DO TO STOP THE UNION. HE COULD NOT REMEMBER

Parnell's reply. Similarly, Parnell had no trouble in relating the proceedings of the !ebruary 15th meeting. But was unable to remember the content of his conversation with ('alcutt the follow-ing morning. We found both witnesses to be totally evasive with respect to their conversation on the morning of February 15th. On the evidence before us, we are of opinion, that at the very least, Parnell gave tacit support to Calcutt in his subsequent activities in opposition to the union.

IN THE LIGHT OF THE EVIDENCE RELATING TO THE MEETING OF FEBRUARY 15TH. IT IS APPARENT THAT CALCUTT CLEARLY IDENTIFIED HIMSELF WITH PARNELL IN A MANNER WHICH MUST HAVE BEEN OBVIOUS TO THE EMPLOYEES PRESENT. IN OUR OPINION, THE EMPLOYEES HAD GOOD REASON TO BELIEVE THAT THEIR SUPPORT OR NON-SUPPORT OF THE PETITION CIRCULATED BY CALCUIT WOULD BECOME KNOWN TO MANAGEMENT. While Parnell's evidence is that he told the employees that that WOULD NOT BE SUBJECT TO ANY PENALTY BY MANAGEMENT IF THEY JOINED THE UNION. WE FIND IT SIGNIFICANT THAT WALTERS LIED TO PARNEL WHEN PARNELL ASKED HIM IF HE HAD BEEN TO THE UNION MEETING. IN OUR VIEW, THE EXPLANATION OF BOTH WALTERS! ORIGINAL LIE AND SUR-SEQUENT CONFESSION TO PARNELL IS THAT HE WAS APPREHENSIVE OF JEOPARDIZING HIS POSITION WITH THE RESPONDENT. WE HAVE NO REASON TO BELIEVE THAT THE OTHER EMPLOYEES WOULD HAVE LESS ANXIETY THAN WALTERS CONCERNING POSSIBLE CONSEQUENCE OF THEIR SUPPORT FOR THE UNION BECOMING KNOWN TO MANAGEMENT.

IN THE <u>PIGOTT MOTORS (1901) LIMITED ASE</u>, (C.C.F. ANADIAN LABOUR LAW REPORTER VOL. 1, ¶Lo,264; C.L.S. 76-630. THE FOARD MALE PARTICULAR REFERENCE TO THE RELATIONSHIP THAT EXISTS RETWEEN EMPLOYERS AND THEIR EMPLOYEES, AS FOLLOWS:-

THERE ARE CERTAIN FACTS OF LABOUR-MANAGEMENT RELATIONS WHICH THIS BOARD HAS. AS A RESULT OF 11 EXPERIENCE IN SUCH MATTERS, BEEN COMPELLED TO TAKE COGNIZANCE. ONE OF THESE FACTS IS THAT THERE ARE STILL SOME EMPLOYERS WHO, THROUGH IGNORANCE OR DESIGN. SO CONDUCT THEMSELVES AS TO DENY. ABRIDGE OR INTERFERE IN THE RIGHTS OF THEIR EMPLOYEES TO JOIN TRADE UNIONS OF THEIR OWN CHOICE AND TO BAR-GAIN COLLECTIVELY WITH THEIR EMPLOYER. IN VIEW OF THE RESPONSIVE NATURE OF HIS RELATIONSHIP WITH HIS EMPLOYER, AND OF HIS NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY HIMSELF WITH THE INTERESTS. AND WISHES OF HIS EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY VULNERABLE TO INFLUENCES, OBVIOUS OR DEVIOUS, WHICH MAY OPERATE TO IMPAIR OR DESTROY THE FREE EXERCISE OF HIS RIGHTS UNDER THE ACT. IT IS PRECISELY FOR THIS REASON, AND BECAUSE THE COARD HAS DISCOVERED IN A NOT INCONSIDERABLE NUMBER OF CASES, THAT MANAGEMENT HAS IMPROPERLY INHIBITED OR INTER-FERED WITH THE FREE EXERCISE BY EMPLOYEES OF THEIR RIGHTS UNDER THE ACT, THAT THE WOARD HAS REQUIRED. EVIDENCE IN A FORM AND OF A NATURE WHICH WILL PROVIDE SOME REASONABLE ASSURANCE THAT A DOCUMENT, SUCH AS A PETITION, SIGNED BY EMPLOYEES PURPORTING TO EXPRESS OPPOSITION TO THE CERTIFICATION OF A TRADE UNION TRULY AND ACCURATELY REFLECTS THE VOLUNTARY WISHES OF THE SIGNATORIES.

WHEN WE CONSIDER THE RELATIVELY SMALL NUMBER OF EMPLOYEES
IN THE BARGAINING UNIT, AND PARNELL'S OWN EVIDENCE IN WHICH HE
STRESSED THE CLOSE RELATIONSHIP THAT EXISTED BETWEEN HIMSELF AND
HIS EMPLOYEES, WE ARE OF THE OPINION THE EMPLOYEES IN THE INSTANT
CASE WERE HIGHLY SUSCEPTIBLE TO ANY INFLUENCE EXERTED BY MANAGEMENT.

HAVING REGARD TO ALL THE EVIDENCE, WE ARE OF THE OPINION THAT THE CONDUCT OF THE MANAGEMENT OF THE RESPONDENT COMPANY SO INFLUENCED THE EMPLOYEES AS TO IMPAIR THEIR ABILITY TO MAKE THEIR OWN DECISION. WE ACCORDINGLY DO NOT ACCEPT THE PETITION AS REPRESENTING A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

" DISSENT.

AT THE MEETING OF THE EMPLOYEES CONVENED BY RESPONDENT COMPANY ON MONDAY, FEBRUARY 15TH, DOUGLAS PARNELL, THE PRESIDENT OF THE COMPANY, READ ALOUD SECTIONS 3,4 AND 48 OF THE LABOUR RELATIONS ACT. THESE SECTIONS READ AS FOLLOWS:-

- 3. EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.
- 4. EVERY PERSON IS FREE TO JOIN AN EMPLOYERS!
  ORGANIZATION OF HIS OWN CHOICE AND TO PARTICIPATE
  IN ITS LAWFUL ACTIVITIES.

48. No employer or employers! organization and no person acting on behalf of an employer or an employers! organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence. (Emphasis added).

THE CONCISE OXFORD DICTIONARY DEFINES COERCION, INTIMIDATE, THREAT AND PROMISE AS FOLLOWS:-

COERCION - CONTROLLING OF VOLUNTARY AGENT OR ACTION BY FORCE.

INTIMIDATE - INSPIRE WITH FEAR, COW, ESPECIALLY
IN ORDER TO INFLUENCE CONDUCT. HENCE
INTIMIDATION, INTIMIDATOR.

THREAT - DECLARATION OF INTENTION TO PUNISH OR HURT; (LAW) SUCH MENACE OF BODILY HURT OR INJURY TO REPUTATION OR PROPERTY AS MAY RESTRAIN PERSON'S FREEDOM OF ACTION;

PROMISE - ASSURANCE GIVEN TO A PERSON THAT ONE WILL

DO OR NOT DO SOMETHING OR WILL GIVE OR

PROCURE HIM SOMETHING:

WEBSTER'S INTERNATIONAL DICTIONARY (SECOND EDITION) DEFINES "UNDUE INFLUENCE" AS:-

"SUCH INFLUENCE OVER ANOTHER AS DESTROYS
HIS FREE AGENCY IN THE EYES OF THE LAW;
SUCH INFLUENCE AS PREVENTS A PERSON FROM
EXERCISING HIS OWN FREE WILL AND SUBSTITUTES
IN ITS PLACE THE WILL OF ANOTHER."

The evidence discloses no coercion, intimidation, threats, promises or undue influence. At the meeting of the employees on February 15th, Parnell told the employees they could join the union or not join the union as they saw fit and they would not be discriminated against in any way by the company.

THERE IS NO EVIDENCE THAT THE RESPONDENT COMPANY OR ANYONE ACTING ON BEHALF OF THE COMPANY CONTRIBUTED FINANCIAL SUPPORT TO THE PETITIONERS. IN FACT, THE EVIDENCE IS QUITE THE CONTRARY.

JOHN CALCUTT, AN EMPLOYEE IN THE BARGAINING UNIT WHO REPRESENTED THE PETITIONERS AT THE HEARINGS, TESTIFIED THAT HE TOOK OUT A PERSONAL LOAN ON HIS HOUSEHOLD FURNITURE IN ORDER TO OBTAIN THE NECESSARY FUNDS TO PAY HIS LEGAL COUNSEL.

THERE ARE 11 EMPLOYEES IN THE BARGAINING UNIT. EIGHT (COOF THESE EMPLOYEES SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION. THE UNION REQUIRED NOT LESS THAN 7 SIGNED APPLICATIONS FOR MEMBERSHIP FOR OUTRIGHT CERTIFICATION.

ONLY 5 OF THE 8 EMPLOYEES WHO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE UNION ALSO SIGNED THE PETITION OPPOSING THE UNION. IF ONLY 2 OF THESE 8 EMPLOYEES HAD SIGNED THE PETITION THE UNION WOULD HAVE BEEN REDUCED TO A VOTE POSITION.

IN ALL THE CIRCUMSTANCES OF THIS CASE, ! WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED THE TAKING OF A REPRESENTATION VOTE SO THAT THE TRUE WISHES OF THE EMPLOYEES COULD BE EXPRESSED BY SECRET BALLOT."

10017-64-R: TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MERCHANTS PAPER COMPANY (WINDSOR) LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(7 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The evidence of Alvin Chevalier who appeared in support of the petition is that after seeing the notice of the application for certification in the early afternoon of the day on which it was posted on the premises of the respondent he went to Tom Earish and asked him what to do. Earish told him that the only way to get rid of the union was to write to the Board saying that he (Chevalier) did not want the union. A short time later that same afternoon, during working hours, Earish came to Chevalier and gave him a typewritten document the content of which expressed opposition to the union. Chevalier's testimony is that he signed the document himself and immediately thereafter secured the signatures of other employees. All of the signatures were secured on the premises of the respondent during working hours.

CHEVALIER FURTHER TESTIFIED THAT AFTER SECURING ALL THE SIGNATURES ON THE TYPEWRITTEN DOCUMENT PROVIDED TO HIM BY EARISH, HE (CHEVALIER) DECIDED THAT IT WOULD BE BETTER TO SUBMIT A HAND-WRITTEN DOCUMENT TO THE BOARD OPPOSING THE UNION IN WORDING WHICH WOULD EXPRESS THE VIEWS OF THE EMPLOYEES. CHEVALIER THEREUPON ARRANGED A MEETING AT THE HOME OF A FELLOW EMPLOYEE THE SAME EVEN-ING. CHEVALIER SAID THAT HE NOTIFIED THE OTHER EMPLOYEES OF THE MEETING. AT THE MEETING THE EMPLOYEES PRESENT DISCUSSED THE WORD-ING OF THE PETITION AND CHEVALIER WROTE IT IN HIS OWN HANDWRITING. (THIS DOCUMENT IS THE PETITION WHICH WAS FILED WITH THE BOARD). ALL OF THE EMPLOYEES PRESENT THEN SIGNED THE PETITION. CHEVALIER'S EVIDENCE IS THAT ALL OF THE EMPLOYEES WHO SIGNED THE ORIGINAL TYPE-WRITTEN DOCUMENT EXPRESSING OPPOSITION TO THE APPLICATION ALSO SIGNED THE SUBSEQUENT HANDWRITTEN PETITION WHICH IS BEFORE THE BOARD. THE TESTIMONY OF DAVID BUTZER LARGELY CONFIRMS THE EVIDENCE OF CHEVALIER.

IT IS CLEAR THAT THE PETITION BEFORE THE BOARD WAS DERIVED FROM AND IS DEPENDENT UPON THE EARLIER TYPEWRITTEN DOCUMENT GIVEN TO CHEVALIER BY EARISH. THE BOARD ACCORDINGLY MUST LOOK TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE EARLIER DOCUMENT UPON WHICH THE PETITION BEFORE THE BOARD IS BASED (SEE LAKEHEAD NEWSPRINT LIMITED CASE O.L.R.B. MONTHLY REPORT, FEBRUARY 1961, P. 397). HAVING REGARD TO THE EVIDENCE THAT THE TYPEWRITTEN DOCUMENT IN OPPOSITION TO THE UNION WAS PRODUCED BY EARISH APPROXIMATELY A

HALF HOUR AFTER CHEVALIER HAD SPOKEN TO HIM. AND IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, IT IS REASONABLE FOR THE BOARD TO INFER THAT THE DOCUMENT WAS PREPARED IN THE OFFICE OF THE RESPONDENT. THE DRAWING OF THIS INFERENCE. IN ITSELF, WOULD NOT CAUSE THE BOARD TO DISREGARD THE PETITION. HOWEVER, IN FAILING TO ADDUCE ANY EVIDENCE AS TO THE CIRCUMSTANCES SURROUNDING THE ACTUAL PREPARATION OF THE DOCUMENT THE EMPLOYEES WHO APPEARED IN SUPPORT OF THE PETITION HAVE FAILED TO MEET THE BOARD'S EVIDENTIARY REQUIREMENTS CONCERNING THE ORIGINATION OF THE PETITION (SEE WEYERHAUSER CANADA LIMITED CASE O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, P. 599). WE THEREFORE ARE NOT PREPARED TO HOLD THAT THE PETITION WEAKENS OR QUALIFIES THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE."

10026-64-R: United Brotherhood of Carpenters and Joiners of America, Local Union 2679 (Applicant) v. Honickman Contracting (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(17 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT EMPLOYEES OF THE RESPONDENT EMPLOYED AS CABINET MAKERS AND EMPLOYEES OF THE RESPONDENT EMPLOYED AS INSTALLER CARPENTERS ARE INCLUDED IN THE BARGAINING UNIT.

10034-64-R: Local Union 120, of the International Brotherhood of Electrical Workers, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Wakefield Lighting .IMITEC (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(28 EMPLOYEES IN THE UNIT).

ON APRIL 13, 1965, THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"For the purposes of clarity the Board declared that Thomas Blythe, G. Carter and D. Richardson do not exercise managerial functions within the meaning of section  $1\ 3$  (B) of The Labour Relations Act and are employees of the respondent included in the bargaining unit."

ON APRIL 23, 1965, THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"The respondent, by its letter dated april 21st, 1965, has requested the Board to review its decision dated april 13th, 1965, in this matter,

SINCE THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE.
IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE AT THE TIME THE

Examiner inquired into the duties and responsibilities of G. Carter and D. Richardson and since the Board considered all the matters raised in the letter from the respondent prior to reaching its decision dated April 13th, 1965, the Board does not consider it advisable to reconsider, vary or revoke its decision dated April 13th, 1965, in this matter. The request of the respondent is accordingly denied.

THE BOARD POINTS OUT HOWEVER, THAT, IN ARRIVING AT ITS DECISION DATED APRIL 13th, 1965, WHEREIN IT FOUND THAT G. CARTER AND D. RICHARDSON WERE INCLUDED IN THE BARGAINING UNIT THE BOARD WAS OF OPINION THAT THE DUTIES PERFORMED BY G. CARTER AND D. RICHARDSON WERE SUCH AS WOULD BE PERFORMED BY PERSONS WHO MIGHT BE CLASSIFIED AS "PLANT CLERICAL STAFF" AND ACCORDINGLY FOUND THAT THEY WERE ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT."

10036-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, HOTEL AND RESTAURANT EMPLOYEES UNION LOCAL 743 (APPLICANT) v. BEAVER FOOD SERVICE ASSOCIATES LTD. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE GLENGARDA URSULINE ACADEMY AT WINDSOR, SAVE AND EXCEPT HEAD CHEF-MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

IN THIS APPLICATION THE BOARD DETERMINED THAT 2 BARGAINING UNITS WERE APPROPRIATE. THE BOARD CERTIFIED THE APPLICANT FOR UNIT #1. THE BOARD ORDERED THAT A REPRESENTATION VOTE BE HELD AMONG THE EMPLOYEES OF UNIT #2 (SEE POSTHEARING VOTE DISMISSED P. 37 OF THIS REPORT).

10044-64-R: United Steelworkers of America (Applicant) v. Atlas Steels Company Limited (Respondent) v. Canadian Steelworkers Union Atlas Division (Intervener).

Unit: "ALL OFFICE CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE CITY OF WELLAND, SAVE AND EXCEPT SUPERVISORS AND ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND ASSISTANT FOREMAN, SALESMEN, BUYERS, PLANT NURSES, MILL METALLURGISTS, SERVICE METALLURGISTS, RESEARCH METALLURGISTS, FINANCIAL ANALYSTS, BUDGET ANALYSTS, GRADUATE CHEMISTS, TECHNICAL ADVISORS, "KNOW-How" coordinators and advisors, Job Classification analysts, Field Expediters, METHODS ENGINEERS, DESIGN ENGINEERS, CONSTRUCTION ENGINEERS, EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT, CONFIDENTIAL SECRETARIES TO THE PRESIDENT, MANAGE CORPORATE SYSTEMS AND DATA PROCESSING, VICE PRESIDENT OPERATIONS, VICE PRESIDENT INTERNATIONAL DIVISION, VICE PRESIDENT SPECIAL PRODUCTS, VICE PRESIDENT AND GENERA MANAGER NORTH AMERICAN MARKETING, WELLAND PLANT MANAGER, MANAGER OF ENGINEERING, MANAGER OF METALLURGY NORTH AMERICA, MANAGER OF INDUSTRIAL ENGINEERING, MANAGER CORPORATE RESEARCH AND DEVELOPMENT, CONTROLLER AND TREASURER, AND MANAGER OF PURCHASES, EMPLOYEES ENGAGED IN A GRADUATE TRAINING PROGRAM, CASUAL PART-TIME EMPLOYEES, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS HIRED DURING THE SCHOOL VACATION PERIOD OR ON A COOPERATIVE TRAINING BASI WITH A UNIVERSITY." (312 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10056-64-R: International Union. United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Gardner-Denver Company (Canada) Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, METHODS AND TIME STUDY MEN AND SECURITY GUARDS." (113 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD HAS INVARIABLY TAKEN THE POSITION THAT EVIDENCE ADDUCED IN SUPPORT OF A PETITION FILED IN OPPOSITION TO THE CERTIFICATION OF AN APPLICANT TRADE UNION MUST INCLUDE CREDIBLE TESTIMONY FROM PERSONS WITH FIRST—HAND KNOWLEDGE OF THE CIRCUM—STANCES OF THE ORIGINATION AND MANNER IN WHICH THE SIGNATURES WERE OBTAINED TO THE DOCUMENT. ONE OF THE PURPOSES OF REQUIRING SUCH EVIDENCE IS TO PROVIDE SATISFACTORY AND REASONABLE ASSURANCE THAT THE PETITION HAS NOT BEEN SPONSORED OR INITIATED BY MANAGEMENT AND THAT THE DESIRES OF THE EMPLOYEES AS REFLECTED IN THE DOCUMENT WERE VOLUNTARILY RECORDED AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY.

HAVING REGARD TO OUR OBSERVATION OF ACTON'S DEMEANOUR AND MANNER OF GIVING EVIDENCE IN THE WITNESS BOX, AND TO THE IMPROBABILITIES OF HIS TESTIMONY CONCERNING HIS TELEPHONE CONVERSATIONS WITH THE PERSON WHO APPARENTLY INITIATED THE IDEA OF THE PETITIONS. AND TO THE FACT THAT THIS PERSON WAS NOT CALLED TO EXPLAIN HIS ROLE IN THE MATTER, AND TO THE CIRCUMSTANCES SURROUNDING THE CIRCULATION OF THE DOCUMENTS, INCLUDING THE FACT THAT ONE OF THE DOCUMENTS WAS SIGNED BY TWO FOREMEN, WE ARE CONSTRAINED TO FIND THAT THE EVIDENCE PRESENTED FAILS TO PROVIDE A CREDIBLE AND SATISFACTORY ACCOUNT OF THE ORIGINATION OF THE DOCUMENTS.

IN THE CIRCUMSTANCES, WE ARE UNABLE TO FIND THAT THE DOCUMENTS FILED IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT WEAKEN ITS EVIDENCE OF MEMBERSHIP."

BOARD MEMBER M.C. HAY DISSENTED AND SAID :-

"| DISSENT.

I FIND DUNCAN ACTON TO BE A CREDIBLE WITNESS WHOSE UNCONTRADICTED TESTIMONY BY ITSELF ESTABLISHES THE ORIGINATION AND CIRCULATION OF THE PETITION FREE FROM MANAGEMENT INFLUENCE OR ASSISTANCE WITHIN THE WELL ESTABLISHED POLICY OF THE BOARD.

IT WELL MAY BE THAT, HAD GORDON PIERCE ( A FELLOW EMPLOYEE) BEEN CALLED TO TESTIFY, HIS CORROBORATIVE EVIDENCE WOULD HAVE LENT FURTHER WEIGHT TO WHAT I FIND TO BE THE ALREADY SATISFACTORY EVIDENCE OF ACTON CONCERNING THE ORIGINATION OF THE PETITION.

IN MY VIEW, ESPECIALLY IN THE ABSENCE OF CHARGES OF MANAGEMENT INTERFERENCE BY THE APPLICANT UNION, SUCH A REQUIREMENT WOULD BE TO ESTABLISH A HEAVIER BURDEN OF PROOF THAN IS REQUIRED OF PETITIONS IN SUCH MATTERS.

ACCORDINGLY | WOULD DIRECT A REPRESENTATION VOTE BE TAKEN OF EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT."

10103-64-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA AFL-CIO, CLC (APPLICANT) v. DOMTAR CONSUMER PRODUCTS LTD. PLASTICS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(93 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10116-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Haun Drop Forge Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS
ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

10120-64-R: Building Service Employees' International Union, Local 532 AFL-C10., CLC (Applicant) v. Versafood Services Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE FOOD MANAGEMENT DIVISION OF THE RESPONDENT AT MCMASTER UNiversity at Hamilton, save and except chefs, assistant manager, persons above the ranks of chef and assistant manager and office staff, and persons regularly employed for not more than 24 hours per week." (39 employees in the unit).

10123-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE TOWN OF RIVERSIDE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RIVERSIDE, SAVE AND EXCEPT THE SUPERINTENDENT OF BUILDINGS, PERSONS ABOVE THE RANK OF SUPERINTENDENT OF BUILDINGS, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (21 EMPLOYEES IN THE UNIT).

10124-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Dominion Auto Accessories Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND PERSONS EMPLOYED AT THE RESPONDENT'S WAREHOUSE." (114 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10130-64-R: International Union of Operating Engineers Local 796 (Applicant) v. Continental Casualty Company (Respondent).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

10131-64-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, Local Union No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. KINGSLEA TRANSPORTS LTD. (RESPONDENT).

UNIT: "ALL DRIVERS OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO AND WOODSTOCK, SAVE AND EXCEPT DESPATCHERS, PERSONS ABOVE THE RANK OF DESPATCHER AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE REGISTRAR WAS INFORMED THAT THE RESPONDENT DID NOT HAVE ANY TERMINAL FACILITIES AND THEREFORE COULD NOT POST THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION (FORM 5). EACH EMPLOYEE ACCORDINGLY WAS SENT A COPY OF FORM 5 BY REGISTERED MAIL DATED March 22nd, 1965. Counsel for a group of employees who appeared at THE HEARING OF THE BOARD ON APRIL 1ST, 1965 REQUESTED THAT THE BOARD EXTEND THE TERMINAL DATE ON THE GROUNDS THAT THERE WAS INSUFFICIENT TIME BETWEEN THE DATE THAT THE REGISTERED LETTERS WERE RECEIVED BY THE EMPLOYEES AND THE TERMINAL DATE OF MARCH 26TH, 1965 FOR THE EM-PLOYEES TO FILE THEIR REPRESENTATIONS IN OPPOSITION TO THE APPLICATION. No EVIDENCE WAS ADDUCED AT THE HEARING AS TO WHEN THE NOTICES OF THE APPLICATION WERE RECEIVED BY THE EMPLOYEES. IN THE ABSENCE OF EVI-DENCE TO THE CONTRARY IT IS REASONABLE TO ASSUME THAT THE REGISTERED LETTERS WERE RECEIVED BY THE EMPLOYEES ON MARCH 23RD. HAVING REGARD TO THE FACT THAT THERE WERE ONLY THREE EMPLOYEES AFFECTED BY THE APPLICATION AND THE FACT THAT THEY HAD AT LEAST THREE DAYS PRIOR TO THE TERMINAL DATE IN WHICH TO FILE OBJECTIONS TO THE APPLICATION HAD THEY SO DESIRED, WE SEE NO MERIT IN THE ARGUMENT OF COUNSEL. HIS REQUEST IS ACCORDINGLY DENIED."

10135-64-R: Wood, Wire and Metal Lathers International Union, Local 97 (APPLICANT, v. Suburban Lathing & Accoustics Limited (Respondent).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSON ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"There appears to be no necessity to hold a hearing on the first three grounds set out in paragraph 14(3) of the respondent's reply.

As to the fourth ground contained in paragraph 14/3, of the Reply, (Respondent is in doubt as to whether his employees or any them have properly become members of the applicant union, and would

SUGGEST THAT THE TRUE WISHES OF THE EMPLOYEES WOULD LIKELY BE DISCLOSED BY REPRESENTATION VOTE.)THIS IS A MATTER WHICH HAS BEEN DEALT WITH BY THE BOARD IN A NUMBER OF PREVIOUS CASES. (SEE DORAL HOLDINGS LIMITED CASE, BOARD FILE No. 9346-64-R, O.L.R.B. MONTHLY REPORT SEPTEMBER 1964, PAGE 259, AND THE CASES REFERRED TO THEREIN.) THE BOARD SEES NO REASON FOR DEPARTING FROM THE POSITION TAKEN IN THE EARLIER CASES. WHETHER A VOTE SHOULD BE DIRECTED IN THE PRESENT CASE WOULD DEPEND ON THE NUMBER OF MEMBERS THE APPLICANT HAS AMONG THE EMPLOYEES IN THE BARGAINING UNIT. IN ALL THESE CIRCUMSTANCES, THEREFORE, AND HAVING REGARD TO THE PROVISIONS OF SECTION 75(9A) OF THE LABOUR RELATIONS ACT, THE BOARD SEES NO REASON TO HOLD A HEARING IN THIS CASE ON THE BASIS OF THE REPRESENTATIONS CONTAINED IN PARAGRAPH 14(3) OF THE REPLY.

THE RESPONDENT HAS INFORMED THE BOARD IN A LETTER DATED MARCH 30TH, 1965, THAT IN ITS OPINION THE ISSUE HAS BEEN RAISED RESPECTING ALLEGED IRREGULARITIES IN THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. HOWEVER, ALTHOUGH A WEEK HAS ELAPSED SINCE THIS LETTER WAS RECEIVED BY THE BOARD, NO PARTICULARS OF THESE CHARGES HAVE BEEN FILED AND THERE IS NOTHING BEFORE THE BOARD AT THIS TIME WHICH REQUIRES FURTHER INQUIRY BY THE BOARD. THE ATTENTION OF THE PARTIES IS DRAWN TO THE DECISION OF THE BOARD IN THE ALCAN COLONY LIMITED CASE, REFERRED TO IN THE DORAL HOLDINGS LIMITED DECISION (SUPRA)."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"FOLLOWING THE ISSUE OF THE CERTIFICATION ORDER IN THIS MATTER
THE RESPONDENT FILED ALLEGATIONS OF IRREGULARITIES RESPECTING SOME
OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT TRADE UNION.
MORE SPECIFICALLY THE RESPONDENT ALLEGED THAT TWO EMPLOYEES DID NOT
"PAY MEMBERSHIP FEE PRIOR TO RECEIVING UNION CARDS."

WHERE ALLEGATIONS OF THIS NATURE ARE MADE THE BOARD FOLLOWS CERTAIN PROCEDURES WHICH ARE DESCRIBED IN DETAIL BY THE CHAIRMAN OF THE BOARD IN A PAMPHLET ENTITLED "THE ONTARIO LABOUR RELATIONS BOARD AND NATURAL JUSTICE" AT PP. 31 ET SEQ., REPRINT SERIES: No. 7 OF THE INDUSTRIAL RELATIONS CENTRE, QUEEN'S UNIVERSITY, A COPY OF WHICH HAS BEEN PLACED IN THE DEPARTMENT OF LABOUR LIBRARY AT 8 YORK STREET, TORONTO.

The following quotation is to be found at pp. 33-34 of the pamphlet:

"IN ADDITION TO THE INVESTIGATION OF THE AUTHENTICITY OF THE SIGNATURES ON MEMBERSHIP CARDS CONDUCTED BY THE BOARD ON ITS OWN INITIATIVE, ANY PARTY TO THE PROCEEDINGS OR ANY EMPLOYEE CONCERNED MAY INFORM THE BOARD THAT CERTAIN NAMED PERSONS, ON WHOSE BEHALF THERE IS REASON TO BELIEVE MEMBERSHIP CARDS WERE SUBMITTED TO THE BOARD IN SUPPORT OF THE

APPLICATION, DID NOT SIGN THE MEMBERSHIP CARDS PURPORTING TO BEAR THEIR SIGNATURES OR DID NOT PAY THE DUES WHICH THE RECEIPTS SUBMITTED ON THEIR BEHALF PURPORTED TO ACKNOWLEDGE. THE NAMES SO FURNISHED TO THE BOARD BY AN OPPOSING PARTY ARE CHECKED AGAINST THE MEMBERSHIP CARDS FILED BY THE UNION, AND, IF ANY PERSON WHOSE NAME IS SO FURNISHED IS CLAIMED BY THE UNION AS A MEMBER, THAT PERSON WILL BE INTERVIEWED BY AN EXAMINER.

WHERE A PERSON IS INTERVIEWED BY AN EXAMINER IN THE CIRCUMSTANCES JUST OUTLINED, HE IS REQUESTED TO COMPLETE A QUESTIONNAIRE AS TO WHETHER HE SIGNED THE CARD OR PAID THE REQUISITE DUES, AS THE CASE MAY BE. WHERE THE PERSON INTERVIEWED STATES TO THE EXAMINER THAT HE DID SIGN THE CARD AND DID PAY THE REQUISITE AMOUNT OF DUES, NO FURTHER ACTION IS TAKEN AND NEITHER THE STATEMENT OF THE EMPLOYEE NOR THE APPARENT DISCREPANCY IN HIS SIGNATURE, WHERE THERE APPEARS TO BE SUCH A DISCREPANCY, IS REVEALED TO THE PARTIES. IF THE BOARD WERE TO REVEAL THE CONTENTS OF THE STATEMENT MADE BY THE EMPLOYEE TO A PARTY THAT MADE AN ALLEGATION CASTING DOUBTS ON THE VALIDITY OF THE CARD OR RECEIPT, THE RESULT WOULD BE THAT SUCH A PARTY COULD RESORT TO THE SIMPLE EXPEDIENT OF SUCH AN ALLEGATION TO OBTAIN DISCLOSURE OF INFORMATION AS TO UNION MEMBERSHIP WHICH IT WOULD NOT BE ENTITLED TO OBTAIN OTHERWISE. IF THE PERSON INTERVIEWED STATES TO THE EXAMINER THAT HE DID NOT SIGN THE CARD OR DID NOT PAY THE REQUISIT FEE, THE BOARD CONDUCTS A FORMAL INQUIRY INTO THE MATTER. ALL PARTIES ARE ADVISED OF THE BOARD'S INTENTION TO HOLD SUCH AN INQUIRY AND THEY ARE GIVEN INFORMATION AS TO THE NATURE OF THE MATTERS THAT WILL BE INQUIRED INTO. THE NAME OF THE EMPLOYEE IN-VOLVED AND THE NAMES OF ANY OTHER PERSONS WHO, TO THE KNOWLEDGE OF THE BOARD, MAY BE ABLE TO CAST LIGHT ON THE SITUATION -- ANY PERSON WHO PURPORTED TO WITNESS THE EMPLOYEE'S SIGNATURE, THE COLLECTOR OF THE DUES , ANY PERSONS WHO MAY HAVE BEEN PRESENT DURING THE TRANSACTION -- WILL BE REVEALED TO ALL PARTIES BEFORE THE HEARING TAKES PLACE. THESE PERSONS ARE SUMMONED BY THE BOARD ITSELF. AT THE HEARING, THE BOARD EXAMINES THE WITNESSES IN THE FIRST INSTANCE AND THEN MAKES THEM AVAILABLE TO THE OTHER PARTIES FOR CROSS-EXAMINATION. THE OTHER PARTIES ARE OF COURSE ENTITLED TO PRESENT REBUTTAL TESTI-MONY IF THEY SEE FIT TO DO SO."

In this case the Board has followed its usual procedures and does not intend to pursue the matter further at this time. "

10140-64-R: International Union of Operating Engineers, Local 700 (Applicant) v. The Brant Sanatorium (Respondent).

Unit: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN BRANTFORD, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

10143-64-R: Wood, WIRE & METAL LATHERS' INTERNATIONAL UNION (APPLICANT) v. Acme Lathing Co. Ltd. (Respondent).

Unit: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (41 EMPLOYEES IN THE UNIT).

10149-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT)
v. DOMINION STORES LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT PRESCOTT, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10153-64-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-C10-CLC (APPLICANT) v. NATIONAL SILICATES LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(54 EMPLOYEES IN THE UNIT).

10154-64-R: Local 280 of the Hotel & Restaurant Employees' and Bartenders' - International Union, A.F.L. - C.I.O.-C.L.C. (Applicant) v. Todmorden Hotel (Toronto) Ltd. (Respondent).

Unit: "ALL FULL TIME AND PART TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS OF THE RESPONDENT AT ITS TODMORDEN PUBLIC HOUSE IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (5 EMPLOYEES IN THE UNIT).

10160-64-R: International Jewellery Workers' Union (Applicant) v. Claude Abrams Industries Limited, carrying on business under the trade name of "Public Optical" (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OPTOMETRISTS, OPTICIANS, AND SALESMEN." (8 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DELIVERY AND MAINTENANCE PERSONNEL ARE NOT INCLUDED IN THE BARGAINING UNIT.

10161-64-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CANADIAN ENGINEERING ENTERPRISES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

10162-64-R: GARAGE EMPLOYEES LODGE No. 1120, INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. R. McDowell Motors Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT SERVICE MANAGERS, SERVICE SALESMEN, CONTROL TOWER OPERATOR, GAS PUMP ATTENDANTS, OUTSIDE PARTS SALESMEN, NEW AND USED MOTOR VEHICLE SALESMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

10166-64-R: Wood, WIRE & METAL LATHERS! INTERNATIONAL UNION (APPLICANT) v. MILANI LATHING LIMITED (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10167-64-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) v. SAVAGE SHOES LIMITED

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (165 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10175-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. CONCRETE COLUMN CLAMPS (1961) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED FOR THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

10176-64-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. ALCAN-COLONY CONTRACTING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY,

SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND CLERICAL STAFF, SHOP AND YARD EMPLOYEES, ENGINEERING STAFF AND SECURITY GUARDS."

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT HAS REQUESTED A HEARING ON THE GROUND THAT THE GEOGRAPHICAL AREA PROPOSED BY THE APPLICANT DIFFERS FROM THE REGULAR BOARD AREA. BECAUSE THE AREA WHICH THE BOARD PROPOSES TO GRANT IS THE SAME AS THAT PROPOSED BY THE RESPONDENT, THE BOARD DOES NOT CONSIDER IT NECESSARY TO PUT THE MATTER ON FOR A HEARING.

THE BOARD SEES NO REASON TO DEPART FROM ITS ESTABLISHED AREA IN THE PRESENT CASE."

10177-64-R: International Hod Carriers Building and Common Labourers Union of America, Local # 493 (Applicant) v. Mannix Co. Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Having regard to the decisions of this Board in Mannix Co. Ltd., Board File No. 9829-64-R, dated January 15th, 1965, and in Mannix Co. Ltd., Board File No. 10051-64-R, dated March 22nd, 1965, and to the nature of the work involved in this case, the Board Further finds that this is an application for certification within the meaning of section 92 of The Labour Relations Act....

IN DEFINING THE BARGAINING UNIT THE BOARD HAS NOT OVER-LOOKED THE SUBMISSION OF THE RESPONDENT THAT FOREMAN, RATHER THAN NON-WORKING FOREMAN SHOULD BE EXCLUDED. AS THE RESPONDENT IS AWARE FROM THE BOARD'S PREVIOUS DECISIONS REFERRED TO ABOVE, IT IS THE POLICY OF THE BOARD TO EXCLUDE NON-WORKING FOREMEN IN CONSTRUCTION INDUSTRY CASES. THE BOARD SEES NO REASON TO DEPART FROM ITS PRACTICE IN THE PRESENT CASE. HOWEVER, SHOULD ANY QUESTION ARISE DURING COLLECTIVE BARGAINING RESPECTING THE STATUS OF ANY PERSONS CLAIMED TO EXERCISE MANAGERIAL FUNCTIONS IT IS ALWAYS OPEN TO THE PARTIES TO SEEK CLARIFICATION FROM THE BOARD UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT."

BOARD MEMBER R.W. TEAGLE DISSENTED AND SAID:-

"I dissent from the finding of the Board that the application is one falling within section 92 of the Act. In My opinion, the work here does not come within the provisions of section 1 (1) (Da)."

10178-64-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UDDEHOLM (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

10180-64-R: GENERAL TRUCK DRIVERS LOCAL 879, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. GEORGE CULLEN TRUCKING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(3 EMPLOYEES IN THE UNIT).

10181-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)

V. PATRICK CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD HAS NOT YET SET AN AREA CENTERING ON HAMILTON, BUT AS A PURELY INTERIM MEASURE CONCLUDED THAT THE COUNTY OF WENTWORTH WOULD BE APPROPRIATE IN THIS CASE.

10182-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, Local 527, (AFL-CIO) (CLC) (APPLICANT) v. CENTRAL PRECAST PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF."
(17 EMPLOYEES IN THE UNIT).

10184-64-R: Wood, WIRE & METAL LATHERS! INTERNATIONAL UNION, Local 97 (APPLICANT) v. LUCKY STAR LATHING & INSULATION CO. (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

10185-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 866 (APPLICANT)

v. The Religious Hospitallers of St. Joseph of Hotel Dieu of St. Catharines
(Respondent).

Unit: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR
HELPERS EMPLOYED IN THE OPERATION OF THE HEATING AND REFRIGERATION EQUIPMENT
OF THE RESPONDENT AT ITS HOSPITAL AT ST. CATHARINES, SAVE AND EXCEPT THE
CHIEF ENGINEER." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10189-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL TRONWORKERS, LOCAL UNION 721 (APPLICANT) v. TORRID OVEN AND EQUIPMENT Co. LTD. (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGGG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO, WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10194-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
v. GNU DEVELOPMENTS LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(4 EMPLOYEES IN THE UNIT).

THE BOARD HAS NOT YET SET AN AREA CENTERING ON HAMILTON, BUT, AS A PURELY INTERIM MEASURE CONCLUDED THAT THE COUNTY OF WENTWORTH AND THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON WOULD BE APPROPRIATE IN THIS CASE.

10195-64-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1081 (APPLICANT) v. UNALTA CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITIE OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10196-65-R: Local Union # 1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. George E. Johnson & Sons Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

10201-65-R: Wood, Wire & Metal Lathers! International Union, Local 97 (Applicant) v. Empire Lathing and Insulating (Respondent).

UNIT: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN DEFINING THE BARGAINING UNIT THE BOARD HAS NOT OVERLOOKED THE SUBMISSION OF THE RESPONDENT THAT FOREMAN, RATHER THAN NON-WORKING FOREMAN SHOULD BE EXCLUDED. IT IS THE POLICY OF THE BOARD TO EXCLUDE NON-WORKING FOREMEN IN CONSTRUCTION INDUSTRY CASES AND THE BOARD SEES NO REASON TO DEPART FROM ITS PRACTICE IN THE PRESENT CASE. HOWEVER, SHOULD ANY QUESTION ARISE DURING COLLECTIVE BARGAINING RESPECTING THE STATUS OF ANY PERSONS CLAIMED TO EXERCISE MANAGERIAL FUNCTIONS IT IS ALWAYS OPEN TO THE PARTIES TO SEEK CLARIFICATION FROM THE BOARD UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT."

10205-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Skead Brothers Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLTON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10207-65-R: International Hod Carriers' Building and Jommon Labourers' Union of America, Local 183 (Applicant) v. Kilmer, Van Nostrand Limited (Respondent).

Unit: "ALL construction Labourers in the employ of the respondent engaged in the construction of bridges and structures associated with road projects within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen, persons above the rank of non-working foreman and those persons covered by the collective agreement between the parties hereto made on the 8th day of June, 1964."

(29 employees in the Unit).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

10218-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL # 506 (APPLICANT) v. DOMINION LIGHTNING ROD. CO. LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF DUNDAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

10219-65-R: R. H. NICHOLS EMPLOYEES ASSOCIATION (APPLICANT) V. R. H. NICHOLS CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, DRAFTSMEN AND DESIGNERS." (69 EMPLOYEES IN THE UNIT).

10225-65-R: Wood, WIRE & METAL LATHERS! INTERNATIONAL UNION, LOCAL 97 (APPLICANT) v. I. & P. LATHING COMPANY LIMITED (RESPONDENT).

Unit: "ALL LATHERS AND LATHERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10227-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS! UNION LOCAL 902, OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT) v. SORRENTO MOTOR HOTEL (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGES OF ITS MOTOR HOTEL LOCATED AT BARRYDOWNE AND HIGHWAY 17, SUDBURY, ONTARIO, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10228-65-R: FUR WORKERS! UNION, LOCAL 82, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. STYLE SHOPPE FURRIERS LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FUR DEPARTMENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS AND OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE BARGAINING UNIT DOES NOT INCLUDE TRUCK DRIVERS AND MAINTENANCE HELP.

10229-65-R: United Brotherhood of Carpenters & Joiners of America, Local Union #1450 (Applicant) v. Ruliff Grass, Construction Company Ltd. (Respondent)

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

10230-65-R: FUR WORKERS' UNION, LOCAL 82, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. DWORKIN FURS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FUR DEPARTMENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

For the purposes of clarity the Board declared that the bargaining unit does not include truck drivers and maintenance help.

10238-65-R: OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124 (APPLICANT) v. ACME LATHING CO. LTD. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(15 EMPLOYEES IN THE UNIT).

10239-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (AFL-CIC) (CLC) (Applicant) v. Acme Lathing Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP) RUSSELL AND PRESCOTT SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10240-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Westdale Electric Company (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL,

AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE CONVERSATION WHICH TOOK PLACE BETWEEN
THE OBJECTOR IN THIS CASE AND HIS EMPLOYER, TO ALL THE OTHER
EVIDENCE AND TO THE REPRESENTATIONS OF THE PARTIES WE ARE NOT
PREPARED TO HOLD THAT THE DOCUMENT FILED WITH THE BOARD IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD
TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS
CASE.

Accordingly the Board's decision of April 21, 1965 is Hereby confirmed."

10242-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Permacon (Canada) Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

AFTER CAREFULLY CONSIDERING THE REPRESENTATIONS OF THE PARTIES, THE BOARD SAW NO REASON FOR DEPARTING FROM THE GEOGRAPHIC AREA WHICH IS USUALLY GRANTED IN APPLICATIONS INVOLVING THE NIAGARA PENINSULA.

10255-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Dalacoustic Contractors Limited (Respondent) v. Wood, Wire & Metal Lathers! International Union, Local 423 (Intervener).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWN-SHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE INTERVENER IN THIS CASE HAS A COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH REMAINS IN FORCE UNTIL APRIL 30TH, 1965. THIS AGREEMENT COVERS LATHERS AND LATHERS' APPRENTICES. THE APPLICANT IS SEEKING CERTIFICATION FOR CARPENTERS AND CARPENTERS' APPRENTICES. THE INTERVENER ASKS THE BOARD, IN EFFECT, TO LIMIT ANY CERTIFICATE ISSUED TO THE APPLICANT IN SUCH A WAY AS TO AVOID POSSIBLE FUTURE WORK ASSIGNMENT DISPUTES BETWEEN THE APPLICANT AND THE INTERVENER. IT IS ADMITTED THAT ON THE DATE OF THE MAKING OF THE APPLICATION AND, INDEED, SINCE THAT

TIME THE WORK PERFORMED BY THE CARPENTERS HAS NOT CONFLICTED WITH THAT CLAIMED BY THE INTERVENER.

IT HAS NOT BEEN THE RECENT POLICY OF THE BOARD TO DESCRIBE BARGAINING UNITS IN TERMS OF WORK TO BE PERFORMED BY THE EMPLOYEES IN THE BARGAINING UNIT AND, IN FACT, IN DEALING WITH CARPENTERS' CASES THE POLICY OVER MANY YEARS HAS BEEN TO REFER SIMPLY TO CARPENTERS AND CARPENTERS' APPRENTICES. IN OTHER WORDS THE BOARD HAS TAKEN THE POSITION THAT IT IS NOT THE FUNCTION OF THE BOARD TO DEFINE OR DELIMIT THE TRADE JURISDICTION OF THE VARIOUS CRAFT UNIONS UNLESS THERE ARISES IN A PARTICULAR CASE A QUESTION OF CONFLICT OF BARGAINING RIGHTS. SUCH A CONFLICT HAS NOT ARISEN IN THE PRESENT CASE AND THE BOARD DOES NOT INTEND TO DEPART FROM ITS USUAL PRACTICE.

IT IS POINTED OUT THAT IF A WORK ASSIGNMENT DISPUTE SHOULD OCCUR IN THE FUTURE THE LABOUR RELATIONS ACT, IN SECTION 66, PROVIDES A METHOD FOR ITS FINAL DETERMINATION BY A JURISDICTIONAL DISPUTES COMMISSION. THE BOARD ALSO NOTES THAT AT THE PRESENT TIME THE INTERVENER HAS BARGAINING RIGHTS FOR LATHERS AND LATHERS! APPRENTICES OF THE RESPONDENT AND THE WORK OF SUCH EMPLOYEES IS CLEARLY SPELLED OUT IN THE INTERVENER'S COLLECTIVE AGREEMENT WITH THE RESPONDENT. A REMEDY IS AVAILABLE TO THE INTERVENER FOR A VIOLATION OF THIS OR ANY SIMILAR AGREEMENT UNDER THE GRIEVANCE AND ARBITRATION PROVISIONS OF THE AGREEMENT. IN ADDITION THE ATTENTION OF THE PARTIES IS DIRECTED TO SUBSECTION 6 OF ŞECTION 66 OF THE LABOUR RELATIONS ACT."

10261-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Seaver Foundations Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10264-65-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION No. 1059 (APPLICANT) v. WIMPEY (CONSTRUCTORS) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(26 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IT IS CLEAR THAT THE COLLECTIVE AGREEMENT FILED BY THE RESPONDENT WHICH IT HAS WITH LOCAL UNION 183 OF THE INTERNATIONAL HOD CARRIERS!, BUILDING AND COMMON LABOURERS! UNION OF AMERICA DOES NOT COVER EMPLOYEES AFFECTED BY THIS APPLICATION. IN THESE CIRCUMSTANCES, THEREFORE, THE MATTERS RAISED BY THE RESPONDENT IN ITS REPLY ARE MATTERS WHICH CANNOT BE CONSIDERED IN THIS APPLICATION BUT ARE MORE PROPERLY THE SUBJECT OF COLLECTIVE BARGAINING

BETWEEN THE PARTIES. IT SHOULD BE NOTED THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT DOES NOT IN ANY WAY INDICATE THAT THE EMPLOYEES AFFECTED ARE MEMBERS OF LOCAL UNION 183 OF THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS, UNION OF AMERICA."

10266-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Bayberry Electric (Respondent).

Unit: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

10270-65-R: INTERNATIONAL HOD CARRIERS!, BUILDING AND COMMON LABOURERS! UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) v. RICHARD & B. A. RYAN (1958) LIMITED (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10273-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. STRAND ELECTRIC LIMITED (RESPONDENT).

Unit: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

IN THIS CASE THE APPLICANT REQUESTED AN AREA WHICH DID NOT CONFORM TO THE ESTABLISHED BOARD AREA. THE BOARD COULD SEE NO REASON TO DEPART FROM ITS REGULAR AREA.

10277-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) v. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN CORNWALL AND THE TOWNSHIP OF CORNWALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND AS A PURELY INTERIM MEASURE, THE BOARD FOUND THE UNIT DESCRIBED ABOVE TO BE APPROPRIATE.

10281-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (AFL-CIO) (CLC) (Applicant) v. Allied Concrete Forming Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

10283-65-R: Wood, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) v. McKINLAY LATHING (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10288-65-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Johnson - Kiewit, A Joint Venture (Respondent).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET." (2 EMPLOYEES IN THE UNIT).

10294-65-R: International Hod Carriers Building and Common Labourers Union, Local # 597 (Applicant) v. West York Construction (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10298-65-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA LOCAL 1891 (APPLICANT) v. K. MENKOWSKI (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITH A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE

SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

## CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10057-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Honeywell Controls Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STEAMFITTERS AND PIPE-FITTERS IN THE SERVICE AND INSTALLATION DEPARTMENTS, OFFICE, TECHNICAL AND SALES STAFF, SECURITY GUARDS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (710 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

IN THIS APPLICATION THE BOARD DETERMINED THAT TWO VOTING CONSTITUENCIES WERE APPROPRIATE. THE RESULT OF THE VOTE HELD IN CONSTITUENCY #1 WAS AS FOLLOWS:-

NUMBER OF NAMES ON REVISED VOTERS! LIST	683
Number of ballots cast	681
NUMBER OF BALLOTS SEGREGATED AND	
NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	402
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	277

IN VOTING CONSTITUENCY #2 THE 27 PERSONS ELIGIBLE TO VOTE ALL CAST THEIR BALLOTS. BECAUSE OF THE OVERWHELMING MAJORITY OF BALLOTS CAST IN FAVOUR OF THE APPLICANT IN VOTING CONSTITUENCY #1 THE BOARD FOUND THAT IT WOULD THEREFORE BE UNNECESSARY TO COUNT THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #2 SINCE THE RESULT OF THE VOTE IN VOTING CONSTITUENCY #2 COULD NOT POSSIBLY AFFECT THE OVER ALL RESULT OF THE PREHEARING REPRESENTATION VOTE IN THIS MATTER.

10073-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF COMMISSIONERS OF POLICE OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY TO THE CHIEF OF POLICE." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of Names on Revised voters\* List 23

Number of Ballots Cast 22

Number of Ballots Marked in 52

Favour of Applicant 22

Number of Ballots Marked 32

Against Applicant 0

10101-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Eltra of Canada Limited (Respondent) v. Prest-O-Lite Battery Association (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PREST-O-LITE BATTERY DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF AND LABORATORY TECHNICIANS."

(96 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER C	F NAMES ON REVISED VOTERS! LIST			96
NUMBER C	F BALLOTS CAST		95	
NUMBER C	F SPOILED BALLOTS	1		
NUMBER C	OF BALLOTS MARKED IN			
FAVOUR	OF APPLICANT	58		
NUMBER C	F BALLOTS MARKED IN			
FAVOUR	OF INTERVENER	36		

## CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10033-64-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT KINGSTON, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (33 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST	33
NUMBER OF BALLOTS CAST	31
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	25
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	6

# APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

## No Vote Conducted

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON JULY 23RD, 1964, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER. ON AUGUST 7TH, 1964, THE DIRECTION FOR TAKING THE VOTE WAS DEFERRED TO A FUTURE DATE BY ORDER OF THE REGISTRAR ON THE GROUND THAT THERE WERE NO EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. SINCE THAT TIME THE POSITION HAS NOT

CHANGED.

THE APPLICANT HAS INFORMED THE BOARD THAT IT IS CONTENT TO ABIDE BY THE BOARD'S DECISION CONCERNING THE DISPOSITION OF THE APPLICATION.

IN ALL THE CIRCUMSTANCES WE ARE OF THE OPINION THAT THE MATTER SHOULD NOT BE FURTHER DELAYED.

ACCORDINGLY, THESE PROCEEDINGS ARE HEREBY TERMINATED. "

9865-64-R: International Hod Carriers' Building & Common Labourers' Union of America, Local 1059, London, Ontario (Applicant) v. Clairson Construction Company Ltd. (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(8 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION."

BOARD MEMBER G. RUSSELL HARVEY WHILE NOT DISSENTING SAID:-

"While I do not dissent from the decision of the Board, I feel that I should point out that it was the applicant trade union that took the position that it has no other alternative than to withdraw. Thus, for example, no consideration was given, apparently, to requesting the Board to postpone the taking of the vote directed by the Board for some stated period."

10105-64-R: Hotel & Restaurant Employees and Bartenders' International Union, AFL-CIO-CLC (Applicant) v. Westminster Hotel Limited (Respondent) (128 employees).

(SEE INDEXED ENDORSEMENT PAGE 56 ).

10156-64-R: Local # 1834 Glaziers Division, Brotherhood of Painters,
Decorators, and Paperhangers of America (Applicant) v. Canadian Pittsburg
Industries Limited (Respondent). (3 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE REPRESENTATIONS AND THE AGREEMENT OF THE PARTIES AT THE HEARING, THE PROCEEDINGS ARE TERMINATED."

10168-64-R: International Union of Operating Engineers, Local 793 (Applicant) v. L. M. Welter Limited (Respondent). (9 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE OF ONE OF THE EMPLOYEES IS THAT A REPRESENTATIVE OF THE APPLICANT TOLD HIM AND ANOTHER EMPLOYEE THAT IF THEY JOINED THE UNION NOW THEY COULD DO SO AT A SPECIAL RATE BUT IF THE UNION WAS CERTIFIED IT WOULD COST THEM ABOUT THREE TIMES AS MUCH AND, FURTHER, IF THEY DIDN'T WANT TO HAVE ANYTHING TO DO WITH THE UNION THEY WOULD BE OUT OF A JOB. IN THE WORDS OF THE WITNESS "THE WAY I TOOK IT, UNION AND NON UNION MEN COULDN'T WORK ALONG SIDE OF ONE ANOTHER —— IN GENERAL AND NOT JUST ON THE DUPONT JOB." THE REFERENCE TO THE DUPONT JOB WAS WITH RESPECT TO EARLIER TESTIMONY IN WHICH THE WITNESS SAID THAT HE UNDERSTOOD THE UNION REPRESENTATIVE TO SAY THE RESPONDENT COMPANY WOULDN'T BE WORKING ON THE DUPONT JOB IF THE COMPANY WAS NON UNION.

THIS EVIDENCE WAS UNCONTRADICTED. ALTHOUGH THE APPLICANT UNION HAD NOTICE THAT ALLEGATIONS OF MISREPRESENTATION AND INTIMI-DATION HAD BEEN MADE AND THAT THE MATTER WAS PUT ON FOR HEARING TO CONSIDER THESE ALLEGATIONS, IT DID NOT CALL ANY EVIDENCE IN REPLY. THE PLAIN FACT OF THE MATTER IS THAT THE APPLICANT UNION DID NOT HAVE ITS REPRESENTATIVE WHO SIGNED THE EMPLOYEES INTO MEMBERSHIP PRESENT AT THE HEARING. IN THESE CIRCUMSTANCES WE ARE UNABLE TO ACCEPT THE ARGUMENT MADE BY THE APPLICANT THAT THE WITNESS MUST HAVE MISUNDERSTOOD THE UNION REPRESENTATIVE. WHILE THIS HAS BEEN SO ON OCCASION IN OTHER CASES WHERE SIMILAR ALLEGATIONS HAVE BEEN MADE IT IS NOT OPEN TO US TO DRAW SUCH AN INFERENCE IN THIS CASE IN THE LIGHT OF THE UNCONTRADICTED EVIDENCE OF A WITNESS WHOSE CREDIBIL—ITY IS NOT IN DOUBT.

WE MUST FIND THEREFORE THAT THE STATEMENTS REFERRED TO ABOVE WERE MADE TO THE WITNESS AND ONE OTHER EMPLOYEE OF THE RESPONDENT AND THAT THEY WERE NOT QUALIFIED IN ANY WAY AS FOR EXAMPLE "IF WE NEGOTIATE A UNION SHOP WITH THE EMPLOYER". WHILE WE ARE NOT SO CONCERNED WITH THAT PART OF THE EVIDENCE DEALING WITH THE "CUT RATE" WE TAKE A DIFFERENT VIEW WITH RESPECT TO THE UNQUALIFIED AND UNCONTRADICTED STATEMENT THAT IF THEY CHOSE NOT TO JOIN THE UNION THEY WOULD BE OUT OF A JOB. INDEED THE APPLICANT'S REPRESENTATIVE ADMITTED AT THE HEARING THAT SUCH A STATEMENT IF MADE, WAS QUITE IMPROPER. HAVING FOUND THAT IT WAS IN FACT MADE TO TWO EMPLOYEES WE ARE UNABLE TO GIVE WEIGHT TO MEMBERSHIP EVIDENCE FILED BY THE APPLICANT ON BEHALF OF THESE EMPLOYEES. IT IS UNNECESSARY FOR US TO CONSIDER WHETHER THE MEMBERSHIP EVIDENCE FILED FOR OTHER EMPLOYEES IS AFFECTED IN ANY WAY BECAUSE, DISCOUNTING THE EVIDENCE FILED ON BEHALF OF THE TWO EMPLOYEES AFFECTED, THE APPLICANT HAS LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE. IN THESE CIRCUMSTANCES THEREFORE, THE APPLICATION MUST BE DISMISSED.

HAVING REACHED THIS CONCLUSION IT BECOMES UNNECESSARY TO DEAL WITH THE STATEMENT OF OBJECTIONS OF EMPLOYEES TO THE APPLICATION AND MORE PARTICULARLY THE WEIGHT THAT SHOULD BE GIVEN SUCH DOCUMENT HAVING REGARD TO THE FACT THAT IT WAS PREPARED AND FILED WITH THE BOARD BY THE RESPONDENT'S SOLICITOR. HOWEVER THE ATTENTION OF THE PARTIES IS DIRECTED TO THE NATIONAL PAPER GOODS CASE, (1945) D.L.S. 7-1205 AND TO MPERIAL FOODS (WATFORD) LIMITED O.L.R.B. MONTHLY REPORT, SEPTEMBER

1964, P. 247 AT P. 249.

APPLICATION DISMISSED."

10256-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. W. F. FLYNN & Co. (RESPONDENT) v. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 423 (INTERVENER) v. OPERATIVE PLASTERERS' CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124, OTTAWA - HULL (INTERVENER). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"AT THE HEARING IN THIS MATTER THE FIRST INTERVENER WITHDREW ITS INTERVENTION.

IF THE DOCUMENT, DATED APRIL 5TH, 1965, FILED BY THE SECOND INTERVENER IN THIS CASE IS A COLLECTIVE AGREEMENT, THEN THE APPLICATION IS CLEARLY UNTIMELY HAVING REGARD TO THE PROVISIONS OF SECTION 5 AND 46 OF THE LABOUR RELATIONS ACT.

IF THE SAID DOCUMENT IS NOT A COLLECTIVE AGREEMENT, THE SECOND INTERVENER HAS NOT NEGOTIATED A COLLECTIVE AGREEMENT WITH THE RESPONDENT FOLLOWING CERTIFICATION AND IN THESE CIRCUMSTANCES AN APPLICATION FOR CERTIFICATION BY ANOTHER TRADE UNION CAN NOT BE MADE UNTIL THE BARGAINING RIGHTS OF THE INCUMBENT TRADE UNION HAVE BEEN TERMINATED FOLLOWING AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. SEE WONDER BAKERIES LTD. CASE (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,099, C.L.S. 76-580. CF. CANADA SAND PAPER CASE, (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,111, C.L.S. 76-632.

THE APPLICATION IS DISMISSED. "

10263-65-R: International Hod Carriers' Building & Common Labourers' Union of America, Local 183 (Applicant) v. Peel Construction Company Limited (Respondent). (15 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALONG WITH THIS APPLICATION THE APPLICANT FILED ANOTHER APPLICATION FOR ANOTHER EMPLOYER BEING UNABLE TO DETERMINE WHICH EMPLOYER WAS DOING THE WORK IN QUESTION. IT IS CLEAR THAT THE RESPONDENT IN THIS CASE HAS NO EMPLOYEES ON THE JOB SITES WHICH THE APPLICANT HAS DESCRIBED IN PARAGRAPH 5 OF ITS APPLICATION.

IN THESE CIRCUMSTANCES THE APPLICATION IS DISMISSED."

# DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

9955-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v.
AMERICAN STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT) v. UNITED STEELWORKERS
OF AMERICA (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE POWER HOUSES OF THE RESPONDENT AT ITS JUNCTION ROAD PLANT AT TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER."

Number of names on revised voters' list 7

Number of ballots cast 7

(BALLOTS NOT COUNTED)

(SEE INDEXED ENDORSEMENT PAGE 53 ).

## DISMISSED SUBSEQUENT TO POST-HEARING VOTE

9918-64-R: Hotel & Restaurant Employees' & Bartenders' International Union, Local 197, Hamilton, Ontario (Applicant) v. Waverly House (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BEVERAGE ROOMS AT HAMILTON, SAVE AND EXCEPT MANAGERS, ASSISTANT MANAGERS, OWNERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(6 EMPLOYEES IN THE UNIT).

THE BOARD FOUND THAT A PERSON EMPLOYED BY THE RESPONDENT IN ITS FOOD BAR
. IN ITS BEVERAGE ROOM IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING
UNIT.

Number of names on revised voters! List			6
NUMBER OF BALLOTS CAST		6	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF APPLICANT	2		
NUMBER OF BALLOTS MARKED			
AGAINST APPLICANT	3		

10036-64-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, HOTEL AND RESTAURANT EMPLOYEES UNION LOCAL 743 (APPLICANT) v. BEAVER FOOD SERVICE ASSOCIATES LTD. (RESPONDENT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT THE GLENGARDA URSULINE ACADEMY AT WINDSOR, SAVE AND EXCEPT THE HEAD CHEF-MANAGER." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST	2
NUMBER OF BALLOTS CAST	2
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	

(SEE ALSO PAGE 14 OF THE REPORT FOR UNIT #1.)

10045-64-R: SUDBURY GENERAL WORKERS UNION, LOCAL 101, CANADIAN LABOUR CONGRESS (APPLICANT) v. MEREDITH CONNELLY MOTORS Co., LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CAR SALESMEN, SERVICE SALESMEN AND OFFICE STAFF." (60 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS LIST		60
NUMBER OF BALLOTS CAST		60
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED		
AGAINST APPLICANT	39	

(AGREEMENT OF THE PARTIES).

# APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

10190-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. ELWIN G. SMITH AND CO. INC. (RESPONDENT). (8 EMPLOYEES).

10199-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ROSCO METAL PRODUCTS LIMITED (RESPONDENT).

10206-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 493 (APPLICANT) v. NORTHWAY MASONRY COMPANY (RESPONDENT).

10214-65-R: Local Union #1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. Simpson Sears Ltd. (Respondent). (25 EMPLOYEES).

10215-65-R: INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS UNION O AMERICA, LOCAL 1250 (AFL-CIO) (CLC) (APPLICANT) V. STEED & EVANS LIMITED (RESPONDENT). (6 EMPLOYEES).

# APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING APRIL

10193-64-R: André Renaud, Charles Désilets, Jean Claud Provencher, Rénald Coste, Macicot Richard, Jean Guy Pomerleau, Gaeton Crispin, Omer Whissel, RéJean Bougie, Arnold Nicol, Adrien Falardeau, Roland Bélanger, Omer L'Heureux, Irene Paju, A. Paju, Martha Huhtala, Ronald Désilets, Antonio Alexcender, Marcel Pomerleau, Lucien Pomerleau, Réjean Racicot, Roland Boutillette, Arsène Laplante and Real Gravel, (Applicants) v. Lumber and Sawmill Workers Union, (Respondent).

(Re. Bay Lumber LTD., North Bay, Ontario) ON APRIL 5TH, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"On March 29th, 1965, separate applications for a declaration terminating the bargaining rights of the respondent, Lumber and Sawmill Workers Union, with respect to employees of Bay Lumber Limited in the bargaining unit represented by the respondent, were filed by André Renaud, Charles Désilets, Jean Claud Provencher, Rénald Bougie, Racicot Richard, Jean Guy Pomerleau, Gaeton Crispin, Omer Whissel, Réjean Bougie, Arnold Nicol, Adrien Falardeau, Roland Bélanger, Omer L'Heureux, Irene Paju, A. Paju, Martha Huhtala, Ronald Désilets, Antonio Alexcender, Marcel Pomerleau, Lucien Pomerleau, Réjean Racicot, Roland Boutillette, Arsène Laplante and Real Gravel.

THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE CONSOLIDATED AND THAT THE STYLE OF CAUSE OF THIS APPLICATION SHALL BE: "ANDRE RENAUD, CHARLES DESILETS, JEAN CLAUD PROVENCHER, RENAUD BOUGIE, RACICOT RICHARD, JEAN GUY POMERLEAU, GAETON CRISPIN, OMER WHISSEL, REJEAN BOUGIE, ARNOLD NICOL, ADRIEN FALARDEAU, ROLAND BELANGER, OMER L'HEUREUX, IRENE PAJU, A. PAJU, MARTHA HUHTALA, RONALD DESILETS, ANTONIO ALEXCENDER, MARCEL POMERLEAU, LUCIEN POMERLEAU, REJEAN RACICOT, ROLAND BOUTILLETTE, ARSENE LAPLANTE AND REAL GRAVEL, APPLICANTS, AND LUMBER AND SAWMILL WORKERS UNION, RESPONDENT."

THE APPLICATION WAS MADE PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT. THE PARTS OF THIS SECTION RELEVANT TO THE APPLICATION READ AS FOLLOWS:

- (1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.
- (2) ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.
  - (a) IN THE CASE OF A COLLECTIVE
    AGREEMENT FOR A TERM OF NOT
    MORE THAN TWO YEARS, ONLY AFTER
    THE COMMENCEMENT OF THE LAST
    TWO MONTHS OF ITS OPERATION...

The respondent was certified as the bargaining agent of all employees of Bay Lumber Limited engaged in its sawmill operations in the Township of MacMurchy, save and except foremen, persons above the rank of foreman, clerks, scalers and office staff on the 4th day of March. 1964.

THERE HAS BEEN FILED WITH THE BOARD A COLLECTIVE AGREEMENT MADE BETWEEN THE RESPONDENT AND BAY LUMBER LIMITED ON THE 27TH DAY OF JULY, 1964.

IT WOULD FURTHER APPEAR THAT THE EARLIEST EXPIRY DATE OF THE COLLECTIVE AGREEMENT IS THE 26TH DAY OF JULY, 1966.

If the Board is correct in its assumption that the above are the facts of this case it would follow that section 43(1) of the Act is inapplicable and that under section 43(2) (a) of the Act this application is untimely.

THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 15TH DAY OF APRIL, 1965, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF THE OPINION THAT THE BOARD IS IN ERROR, THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING
THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE
APPLICANTS.

IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS, AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS.

ON APRIL 26. 1965 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"The Board has not received any representations from the applicants in response to the Board's directions made in its decision of April 5th, 1965.

THE BOARD NOW FINDS THAT THE RESPONDENT AND BAY LUMBER LIMITED ARE PARTIES TO A COLLECTIVE AGREEMENT DATED THE 27TH DAY OF JULY, 1964, WHICH REMAINS IN FULL FORCE AND EFFECT UNTIL THE 26TH DAY OF JULY, 1966.

Since this application does not come within the terms of section 43(2)(a) of the Labour Relations Act, the Board finds that this application is untimely.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

10316-65-R: WINDSOR MEMORIAL PARK CO. LTD. R R # 2. OLDCASTLE, ONTARIO. EUGENE DUFOUR (APPLICANT) v. BUILDING SERVICE EMPLOYEE'S INTERNATIONAL UNION LOCAL 210 AFL-C10-, CLC 709 QUELLETTE AVE. WINDSOR ONT. (RESPONDENT).

(RE: WINDSOR MEMORIAL PARK LIMITED, OLDCASTLE, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent was certified as the bargaining agent of all employees of Windsor Memorial Park Limited at its Green Lawn Memorial Gardens, R. R. #2, Oldcastle, save and except superintendent and persons above the rank of superintendent on the 21st day of October, 1964.

This application under section 43 of The Labour Relations Act for a declaration terminating the Bargaining Rights of the respondent was made on the 27th day of April, 1965.

Section 43(1) of the Labour Relations Act provides, inter alia, that if a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit.

SINCE A YEAR HAS NOT ELAPSED BETWEEN THE DATE OF THE CERTIFI-CATION AND THE DATE OF THE MAKING OF THIS APPLICATION, THIS APPLICA-TION IS UNTIMELY.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

## APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING APRIL

9960-64-R: LAVERENDRYE HOSPITAL EMPLOYEES UNION LOCAL 795 (APPLICANT) v. LAVERENDRYE HOSPITAL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 57 ).

10039-64-R: United Steelworkers of America (Applicant) v. Kam-Kotia Porcupine Mines Limited (Respondent) v. General Workers Union Local 1602, C.L.C. (Predecessor Trade Union). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant, by reason of transfer of Jurisdiction, has acquired the rights, privileges and duties of the General Workers Union Local 1602, C.L.C. which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Kam-Kotia Porcupine Mines Limited and General Workers Union Local 1602, C.L.C. effective from March 28th, 1963 to September 28th, 1965, with year to year renewal subject to notice.

An affirmative declaration under section 47(1) of the Labour Relations act to the effect that the applicant has acquired the rights, privileges and duties of the General Workers Union Local 1602, C.L.C. which was a party to the agreement referred to with the respondent will issue."

10117-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF HAMILTON (RESPONDENT) v. BOARD OF EDUCATION NON-TEACH EMPLOYEES ASSOCIATION (PREDECESSOR TRADE UNION). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant, by reason of a merger of amalgamation or a transfer of jurisdiction, has acquired the rights, privileges and duties of the Board of Education Non-Teaching Employees Association which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between The Board of Education for the City of Hamilton and the Board of Education Non-Teaching Employees Association effective for a period of two years from April 15th, 1963 and from year to year thereafter subject to notice.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE BOARD OF EDUCATION NON-TEACHING EMPLOYEES ASSOCIATION WHICH WAS A PARTY TO THE AGREEMENT REFERRED TO WITH THE RESPONDENT WILL ISSUE."

10202-65-R: Canadian Brotherhood of Railway Transport and General Workers (Applicant) v. Air Terminal Transport Limited (Respondent). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant, by Reason of a Merger or amalgamation or a transfer of Jurisdiction, has acquired the rights, privileges and duties of Air Terminal Ground Transport Employees Association (also known as Airline Service Union) which was the Bargaining agent for a unit of employees of the respondent defined in a collective agreement between Air Terminal Transport Limited and Airline Service Union effective from June 1st, 1963 to June 1st, 1965 with year to year renewal subject to notice.

An affirmative declaration under section 47(1) of The Labour Relations Act to the effect that the applicant has acquired the rights, privileges and duties of Air Terminal Ground Transport Employees Association (also known as Airline Service Union) which was a party to the agreement referred to with the respondent will issue."

## APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING APRIL

10246-65-U: CANADIAN CARBORUNDUM COMPANY LIMITED (APPLICANT) v. THE UNITED STEELWORKERS OF AMERICA, LOCAL 4151 (RESPONDENT). (WITHDRAWN).

## APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

10126-64-U: ELLIS DON LIMITED (APPLICANT) V. KENNETH JACKSON (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST KENNETH JACKSON, THE RESPONDENT IN THIS MATTER, FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

That the said Kenneth Jackson, being an officer, official or agent of the Bricklayers' and Stone Masons' Union #5, did between March 15th, 1965 and March 16th, 1965 contravene Section 55 of The Labour Relations Act in that he did, at London, counsel, procure, support or encourage an unlawful strike engaged in by employees of the applicant.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

10247-64-U: CANADIAN CARBORUNDUM COMPANY LIMITED (APPLICANT) v. THE UNITED STEELWORKERS OF AMERICA, LOCAL 4151, AND BERT DAVIS AND THOMAS DANE (RESPONDENTS). (WITHDRAWN).

# COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

### DURING APRIL

9922-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. JOANISSE LIMITED (RESPONDENT).

9927-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. JOANISSE LIMITED (RESPONDENT).

9928-64-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (JOMPLAINANT) v. JOANISSE LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING CONSIDERED THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING OF THIS MATTER, THE BOARD IS NOT SATISFIED THAT THE AGGRIEVED PERSON WAS DISCHARGED FROM HIS EMPLOYMENT IN VIOLATION OF THE LABOUR RELATIONS ACT.

THE COMPLAINT IS DISMISSED."

9957-64-U: International Brotherhood of Bookbinders Local 28 (Complainant) v. Manerwood Press Limited (Respondent).

10025-64-U: United Steelworkers of America (Complainant) v. Sapawe Gold Mines Limited (Respondent).

10083-64-U: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. RENFREW AIRCRAFT AND ENGINEERING COMPANY LTD. (RESPONDENT).

10090-64-U: Lucal 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. Harold Gross Limited (Known as the Town Tavern) (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The EVIDENCE PLACED BEFORE US BY THE COMPLAINANT UNION DOES NOT WARRANT A FINDING THAT JERRY CUNNING WAS DISMISSED FROM HIS EMPLOYMENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE COMPLAINT IS DISMISSED."

10169-64-U: Sheet Metal Workers' International Association, Local Union 562 (Complainant) v. Sehl Engineering Limited (Respondent).

10187-64-U: United Steelworkers of America (Complainant) v. Union Carbide Canada Limited (Respondent).

# APPLICATION FOR DETERMINATION UNDER SECTION 34(3) DISPOSED OF DURING APRIL

10122-64-M: United Glass and Ceramic Workers of North America and its Local 295 (AFL-CIO, CLC) (Applicant) v. Pilkington Brothers (Canada) Limited (Pilkington Glass Manufacturing Division). (Respondent).

# APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING APRIL

9402-64-M: The Corporation of the City of Sudbury (Applicant) v. Local #207, Canadian Union of Public Employees (Respondent).

IN THIS APPLICATION THE BOARD FOUND THAT ONE NAMED EMPLOYEE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND WAS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND WAS THEREFORE AN EMPLOYEE OF THE APPLICANT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT, AND THAT ONE OTHER NAMED EMPLOYEE EXERCISED MANAGERIAL FUNCTIONS AND WAS THEREFORE NOT AN EMPLOYEE OF THE APPLICANT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

10150-64-M: THE PUBLIC UTILITIES COMMISSION OF THE CITY OF PORT ARTHUR (APPLICA V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 339 (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application under section 79(2) of The Labour Relations act for a declaration that certain named persons in the

EMPLOY OF THE APPLICANT COMMISSION ARE NOT EMPLOYEES WITHIN THE MEANING OF THE ACT.

THE PERSONS WHOSE STATUS THE APPLICANT SEEKS TO HAVE THE BOARD DETERMINE ARE INCLUDED IN THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH IS EFFECTIVE FROM MAY 1, 1964, TO APRIL 30, 1966. From material submitted to the Board by the applicant COMMISSION, IT IS APPARENT THAT, DURING THE "1962" NEGOTIATIONS, THE COMMISSION TOOK THE POSITION THAT THE TWO PERSONS IN QUESTION WERE NOT EMPLOYEES. THE UNION CONTENDED THAT THEY WERE EMPLOYEES AND SUGGESTED THAT THE COMMISSION MAKE AN APPLICATION TO THE BOARD TO HAVE THE MATTER DETERMINED. NO PROCEEDING TO THIS END WAS INSTITUTED BY THE COMMISSION AT THAT TIME; THE COLLECTIVE AGREEMENT WAS EXECUTED AND NO ISSUE RESPECTING THE STATUS OF THE TWO PERSONS APPEARS TO HAVE ARISEN DURING THE TERM OF THE "1962" AGREEMENT. ON THE MATERIAL BEFORE US, IT DOES NOT APPEAR THAT SUCH AN ISSUE WAS RAISED BY EITHER OF THE PARTIES AT ANY TIME DURING THE NEGOTIATIONS THAT PRECEDED THE EXECUTION OF THE "1964" AGREEMENT - THE CURRENT AGREEMENT - OR AT ANY TIME DURING THE LIFETIME OF THAT AGREEMENT PRIOR TO THE DATE WHEN THE COMMISSION FILED THE INSTANT APPLICATION.

THE SITUATION HERE IS IDENTICAL IN ALL ESSENTIAL RESPECTS WITH THE ONE THAT AROSE IN THE BEAVER WOOD FIBRE COMPANY CASE, 61 C.L.L.C. 900, AND THE PRINCIPLES SET OUT BY THE BOARD IN THAT CASE ARE APPLICABLE TO THIS CASE.

THIS APPLICATION IS THEREFORE PREMATURE AND, SINCE THE APPLICANT COMMISSION HAS NOT, IN OUR OPINION, MADE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED, THIS APPLICATION IS DISMISSED, PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE."

## REFERENCES TO BOARD PURSUANT TO SECTION 794 DISPOSED OF DURING APRIL

9970-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. DEVUONO & GALLUCCI (EMPLOYER).

#### - AND -

9974-64-M: Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Trade Union) v. Carrom Contractors (Employer).

#### - AND -

9975-64-M: Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Trade Union) v. Caravaggio Construction Company Limited (Employer).

#### - AND -

9976-64-M: Uperative Plasterers' and Cement Masons' International Association of the United States and Canada (Trade Union) v. E. Bifolchi (Employer).

#### - AND -

9977-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. ANGLO CONSTRUCTION COMPANY (EMPLOYER).

### - AND -

9978-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. WILMAR CONTRACTORS LIMITED (EMPLOYER).

## - AND -

9979-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. WILLOW CONSTRUCTION COMPANY LIMITED (EMPLOYER).

## - AND -

9981-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. TORONTO ZENITH CONTRACTING LIMITED (EMPLOYER).

#### - AND -

9983-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. ROYCE CONTRACTORS (EMPLOYER).

#### - AND -

9987-64-M: Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Trade Union) v. Hillmount Contractors (Employer).

#### - AND -

\$\frac{\cupeccess{6.89-64-M}}{\text{of the United States and Canada (Trade Union) v. F. Greco & Sons Limited (Employer

(SEE INDEXED ENDORSEMENT PAGE 59 ).

9971-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. DI LORENZO CONSTRUCTION COMPANY (EMPLOYER).

9972-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. DI PEDE BROTHERS (EMPLOYER).

9973-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. CON-DRAIN COMPANY LIMITED (EMPLOYER).

9980-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. WALKER & ALFANO CONSTRUCTION LIMITED (EMPLOYER).

9982-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. STREETSVILLE CONSTRUCTION LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The above case was referred to the Board by the Honourable the Minister of Labour, pursuant to the provisions of section 79<u>A</u> of The Labour Relations Act. The questions referred were (1) whether the trade union was entitled to give notice to bargain to the employer pursuant to section 40, (2) whether the trade union is entitled to require the employer to bargain with it, and (3) such other questions as may arise going to the authority of the Minister to make the appointment of a conciliation officer under section 13 of The Labour Relations Act.

THE ONLY ISSUE RAISED BY THE EMPLOYER BEFORE THE BOARD WAS WITH RESPECT TO THE BARGAINING UNIT. THE EMPLOYER CONTENDS THERE HAVE NOT BEEN FOR SOME TIME NOR ARE THERE AT PRESENT ANY EMPLOYEES IN THE BARGAINING UNIT. RESPONDENT CONTENDS THAT ANY WORK TO BE DONE IS PERFORMED BY FAMILY MEMBERS WHO SHARE IN THE PROFITS OF THE COMPANY. THE UNION DID NOT DENY THIS ALLEGATION.

THE APPLICATION FOR CONCILIATION FALLS UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. Under the provisions OF SECTION 94(2) OF THE ACT THE FACT THAT THERE ARE NO EMPLOYEES IN THE BARGAINING UNIT AT THE TIME A COLLECTIVE AGREEMENT IS RENEWED IS OF NO CONSEQUENCE. WHERE A UNION CALLS ON AN EMPLOYER TO BARGAIN FOR THE RENEWAL OF A COLLECTIVE AGREEMENT, THE RIGHT TO DO SO CANNOT BE AFFECTED, IN OUR OPINION, BY THE ABSENCE OF EMPLOYEES IN THE BARGAIN-ING UNIT. WE SPEAK, OF COURSE, WITH REFERENCE TO CONSTRUCTION IN-DUSTRY CASES.

HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS:

- (1) THAT THE TRADE UNION WAS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 40, AND
- (2) THAT THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN WITH IT."

9984-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. SANELLI CONTRACTING COMPANY LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The above case was referred to the Board by the Honourable the Minister of Labour, pursuant to the provisions of section  $79\underline{a}$ 

of the Labour Relations Act. The Questions referred were (1) whether the trade union was entitled to give notice to bargain to the employer pursuant to section 40, (2) whether the trade union is entitled to require the employer to bargain with it, and (3) such other questions as may arise going to the authority of the Minister to make the appointment of a conciliation officer under section 13 of the Labour Relations Act.

THE EMPLOYER IN THIS CASE BY LETTER TOOK THE POSITION BEFORE THE MINISTER, THAT THE UNION HAD RELINQUISHED ITS BAR-GAINING RIGHTS UNDER THE COLLECTIVE AGREEMENT BY FAILING TO SIGN COLLECTIVE AGREEMENTS WITH A CERTAIN NUMBER OF OTHER EMPLOYERS. HOWEVER, THE EMPLOYER DID NOT FILE A STATEMENT OF POSITION WITH THE BOARD AND DID NOT ATTEND THE BOARD HEARING, ALTHOUGH DULY NOTIFIED OF THE HEARING. THERE IS THUS NO EVIDENCE BEFORE THE BOARD IN THIS CASE RELATING TO THE MATTER RELIED ON BY THE EMPLOYER. NO OTHER ISSUES WERE RAISED BY THE EMPLOYER.

IN THESE CIRCUMSTANCES, THE BOARD FINDS:

- (1) THAT THE TRADE UNION WAS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 40, AND
- (2) THAT THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN WITH IT."

9985-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. RIVERSTONE CONSTRUCTION LIMITED (EMPLOYER).

9986-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) V. EMILIO POMILIO LIMITED (EMPLOYER).

9991-64-M: UPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. DUPONT DRAIN & CONCRETE LIMITED (EMPLOYER).

9988-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) V. FRANK GRIECO & SONS LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The above case was referred to the Board by the Honourable the Minister of Labour, pursuant to the provisions of section 79a of the Labour Relations Act. The questions referred were (1) whether the trade union was entitled to give notice to bargain to the employer pursuant to section 40, (2) whether the trade union is entitled to require the employer to bargain with it and (3) such other questions as may arise going to the authority of the Minister to make the appointment of a conciliation officer under section 13 of the Labour Relations Act.

IN ITS STATEMENT OF POSITION FILED WITH THE BOARD, THE EMPLOYER ALLEGED THAT IT DID NOT HAVE AN AGREEMENT WITH THE TRADE UNION. THE TRADE UNION ADMITTED THAT THE COLLECTIVE AGREEMENT WAS WITH A PARTNERSHIP AND NOT THE EMPLOYER NAMED IN THESE PROCEEDINGS — AN INCORPORATED COMPANY. THE UNION HAS NOT SERVED A NOTICE ON THE EMPLOYER (NAMED IN THESE PROCEEDINGS) UNDER THE PROVISIONS OF SECTION 47A(2) OF THE LABOUR RELATIONS ACT.

IN THESE CIRCUMSTANCES, THE BOARD FINDS THE UNION IS NOT ENTITLED TO REQUIRE THE EMPLOYER NAMED IN THESE PROCEED-INGS TO BARGAIN WITH IT."

9990-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. FAGA CONSTRUCTION COMPANY LIMITED (EMPLOYER).

9992-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. DOLENTE CONSTRUCTION COMPANY (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The above case was referred to the Board by the Honourable the Minister of Labour, pursuant to the provisions of section 79A of The Labour Relations Act. The questions referred were (1) whether the trade union was entitled to give notice to bargain to the employer pursuant to section 40, (2) whether the trade union is entitled to require the employer to bargain with it, and (3) such other questions as may arise going to the authority of the Minister to make the appointment of a conciliation officer under section 13 of the Labour Relations Act.

IN ITS STATEMENT OF POSITION FILED WITH THE BOARD, THE EMPLOYER ALLEGED THAT IT HAD CEASED OPERATIONS. AT THE HEARING THE BOARD WAS INFORMED THAT THE EMPLOYER, A PARTNERSHIP, HAD BEEN DISSOLVED AND THAT ONE PARTNER HAD LEFT THE COUNTRY AND THE OTHERS HAD NOW FORMED AN INCORPORATED COMPANY. THE UNION HAS NOT SERVED A NOTICE ON THE NEWLY FORMED COMPANY, LUIGI DOLENTE LTD., UNDER THE PROVISIONS OF SECTION 474 OF THE LABOUR RELATIONS ACT.

IN THESE CIRCUMSTANCES, THE BOARD FINDS:

(1) THAT THE UNION IS NOT ENTITLED TO REQUIRE THE NEWLY FORMED COMPANY TO BARGAIN WITH IT;

AND

(2) THAT THE PARTNERSHIP NAMED AS THE EMPLOYER
IN THESE PROCEEDINGS, AND WITH WHOM THE UNION
HAD A COLLECTIVE AGREEMENT, NO LONGER EXISTS
AND CANNOT THEREFORE BE REQUIRED TO BARGAIN
WITH THE UNION."

# APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

9478-64-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL - CIO - CLC (Applicant) v. The Goodyear Service Stores, a Division of The Goodyear Tire & Rubber Company of Canada, Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR REASONS GIVEN IN WRITING, THE BOARD FINDS THAT
IT HAS JURISDICTION TO ISSUE A CERTIFICATE WHICH WOULD HAVE
THE EFFECT OF GRANTING BARGAINING RIGHTS WITH RESPECT TO
PERSONS WHO MIGHT BE EMPLOYED BY THE RESPONDENT IN STORES
NOT PRESENTLY ESTABLISHED."

10186-64-R: United Packinghouse, Food & Allied Workers (Applicant) v. Stafford Foods Limited (Respondent). (GRANTED APRIL 1965).

(SEE INDEXED ENDORSEMENT PAGE 63 ).

## INDEXED ENDORSEMENTS - CERTIFICATION

9904-64-R: NORTH BAY GENERAL WORKERS' UNION LOCAL 1603, CANADIAN LABOUR CONGRES (APPLICANT) v. GRAVELL BRICK COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant on January 26th, 1965, applied to be certified as bargaining agent for certain employees of the respondent. The terminal date for this application was fixed as February 2nd, 1965.

A RECEIVING ORDER WAS MADE AGAINST THE RESPONDENT PURSUANT TO THE PROVISIONS OF THE BANKRUPTCY ACT, R.S.C. 1952, Chapter 14, on March 15th, 1965.

This matter came on for hearing on March 16th, 1965.

SECTION 2 (E) OF THE BANKRUPTCY ACT READS AS FOLLOWS:

"CLAIM PROVABLE IN BANKRUPTCY" OR "PROVABLE CLAIM"

OR "CLAIM PROVABLE "INCLUDES ANY CLAIM OR LIABILITY

PROVABLE IN PROCEEDINGS UNDER THIS ACT BY A

PREFERRED, SECURED OR UNSECURED CREDITOR".

SECTION 2 (H) OF THE BANKRUPTCY ACT READS AS FOLLOWS:

"CREDITOR" MEANS A PERSON HAVING A CLAIM,
PREFERRED, SECURED OR UNSECURED, PROVABLE
AS A CLAIM UNDER THIS ACT."

Section 40 (1) of the Bankruptcy Act reads as follows:

"UPON THE FILING OF A PROPOSAL MADE BY AN INSOLVENT PERSON OR UPON THE BANKRUPTCY OF ANY

DEBTOR, NO CREDITOR WITH A CLAIM PROVABLE IN BANKRUPTCY SHALL HAVE ANY REMEDY AGAINST THE DEBTOR OR HIS PROPERTY OR SHALL COMMENCE OR CONTINUE ANY ACTION, EXECUTION OR OTHER PROCEEDINGS FOR THE RECOVERY OF A CLAIM PROVABLE IN BANKRUPTCY UNTIL THE TRUSTEE HAS BEEN DISCHARGED OR UNTIL THE PROPOSAL HAS BEEN REFUSED, UNLESS WITH THE LEAVE OF THE COURT AND ON SUCH TERMS AS THE COURT MAY IMPOSE."

SECTION 41 (1) OF THE BANKRUPTCY ACT READS AS FOLLOWS:

"EVERY RECEIVING ORDER AND EVERY ASSIGNMENT MADE
IN PURSUANCE OF THIS ACT TAKES PRECEDENCE OVER
ALL JUDICIAL OR OTHER ATTACHMENTS, GARNISHMENTS,
CERTIFICATES HAVING THE EFFECT OF JUDGMENTS,
JUDGMENTS, CERTIFICATES OF JUDGMENT, JUDGMENTS
OPERATING AS HYPOTHECS, EXECUTIONS OR OTHER
PROCESS AGAINST THE PROPERTY OF A BANKRUPT,
EXCEPT SUCH AS HAVE BEEN COMPLETELY EXECUTED
BY PAYMENT TO THE CREDITOR OR HIS AGENT,
AND EXCEPT ALSO THE RIGHTS OF A SECURED CREDITOR."

THE MAIN ISSUE BEFORE THE BOARD IS WHETHER OR NOT THE APPLICANT TRADE UNION REPRESENTS THE EMPLOYEES OF THE RESPONDENT. A REPRESENTATION ISSUE OF THIS NATURE IS NOT, IN OUR OPINION, "A CLAIM PROVABLE IN BANKRUPTCY" BECAUSE SUCH A CLAIM IS ONLY PROVABLE IN PROCEEDINGS UNDER THE LABOUR RELATIONS ACT AND THIS BOARD HAS BEEN GIVEN EXCLUSIVE JURISTOLICION WITH RESPECT TO SUCH A MATTER.

IN ADDITION THE APPLICANT CANNOT BE DESCRIBED AS A "CREDITOR" OF THE RESPONDENT WITHIN THE MEANING OF THE BANKRUPTCY ACT SINCE AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT OF THE RESPONDENT'S EMPLOYEES DOES NOT CONSTITUTE THE APPLICANT AS A "PERSON HAVING A CLAIM, PREFERRED, SECURED OR UNSECURED PROVABLE AS A CLAIM UNDER THE BANKRUPTCY ACT".

SECTION 40 (1) OF THE BANKRUPTCY ACT PROVIDES FOR A STAY OF ANY PROCEEDING BROUGHT AGAINST THE DEBTOR BY A CREDITOR WITH A CLAIM PROVABLE IN BANKRUPTCY. However, SINCE IN OUR OPINION THESE PROCEEDINGS ARE NOT FOR THE RECOVERY OF A CLAIM PROVABLE IN BANKRUPTCY, SECTION 40 (1) OF THE BANKRUPTCY ACT HAS NO APPLICATION TO THESE PROCEEDINGS.

SECTION 41 (1) OF THE BANKRUPTCY ACT PROVIDES THAT A RECEIVING ORDER "TAKES PRECEDENCE OVER ALL CERTIFICATES HAVING THE EFFECT OF JUDGMENTS...CERTIFICATES OF JUDGMENT...OR OTHER PROCESS AGAINST THE PROPERTY OF A BANKRUPT". HOWEVER, A CERTIFICATE WHICH THE BOARD MIGHT ISSUE IN A CERTIFICATION APPLICATION UNDER THE LABOUR RELATIONS ACT CERTIFIES THAT A TRADE UNION IS THE BARGAINING AGENT FOR A CERTAIN GROUP OF EMPLOYEES OF AN EMPLOYER AND IT IS OUR OPINION THAT SUCH A CERTIFICATE IS NOT "AGAINST THE PROPERTY" OF AN EMPLOYER.

THE BOARD IS THEREFORE OF OPINION THAT THE RECEIVING CRDER MADE AGAINST THE RESPONDENT IN THIS MATTER IS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION.

ANOTHER FACTOR WHICH THE BOARD HAS TAKEN INTO CONSIDERATION IN ARRIVING AT ITS DECISION IS THE FACT THAT IN A REPRESENTATION ISSUE (WHERE A PRE-HEARING REPRESENTATION VOTE IS NOT REQUESTED) THE BOARD, PURSUANT TO SECTION 7 (1) OF THE LABOUR RELATIONS ACT ASCERTAINS THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AS AT THE TIME THE APPLICATION WAS MADE AND DETERMINES THE MEMBERSHIP POSITION OF THE APPLICANT TRADE UNION AS AT THE TERMINAL DATE OF THE APPLICATION. IN THIS CASE THE RECEIVING ORDER WAS MADE AGAINST THE RESPONDENT AFTER THIS APPLICATION WAS MADE AND AFTER THE TERMINAL DATE."

9925-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PORT COLBORNE AND HUMBERSTONE COMMUNITY CENTRE BOARD (RESPONDENT).

On March 8, 1965, THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE BEFORE THE BOARD IS AS FOLLOWS: THE RESPONDENT WAS ESTABLISHED IN 1959 BY TWO SEPARATE BY-LAWS, ONE PASSED BY THE CORPORATION OF THE TOWN OF PORT COLBORNE AND THE OTHER PASSED BY THE CORPORATION OF THE TOWNSHIP OF HUMBERSTONE, BOTH UNDER THE PROVISIONS OF THE COMMUNITY CENTRES ACT R.S.O. 1950 c.58 AS AMENDED S.O. 1954 C.8 (NOW R.S.O. 1960 C.60). THE MANAGER OF THE PORT COLBORNE AND HUMBERSTONE COMMUNITY CENTRE BOARD (HEREINAFTER REFERRED TO AS THE CENTRE) IS THE RECREATION MANAGER IN THE EMPLOY OF THE CORPORATION OF THE TOWN OF PORT COLBORNE. THE MANAGER IS RESPONSIBLE FOR RENTING THE FACILITIES OF THE CENTRE AND THE RENTAL FEES COLLECTED ARE DEPOSITED IN A BANK ACCOUNT WHICH IS IN THE NAME OF THE RESPONDENT. THE PERSONS EMPLOYED AT THE CENTRE FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE HIRED BY THE MANAGER AND ARE PAID OUT OF THE ABOVE-MENTIONED BANK ACCOUNT. THE EMPLOYEES OF BOTH THE CORPORATION OF THE TOWN OF PORT COLBORNE AND THE CORPORATION OF THE TOWNSHIP OF HUMBERSTONE ARE COVERED BY SEPARATE COLLECTIVE AGREEMENTS. THE PERSONS FOR WHOM THIS APPLICATION IS MADE ARE NOT COVERED BY EITHER OF THE COLLECTIVE AGREEMENTS.

Counsel for the respondent made the following argument:
-aving regard to the manner in which the respondent was established,
it is not a corporate body and has no legal entity aside from the
municipal corporations responsible for its creation. The respondent
not being a legal entity, it has no authority to enter into a
collective agreement with the applicant. Since the respondent
cannot enter into a collective agreement with the applicant the
Board should not certify the applicant for the unit of employees
which it is seeking.

Counsel for the respondent stated that his argument was in accord with a directive issued by the Department of Municipal Affairs setting forth the powers of such a Board. No such directive was filed with the Board. A Letter, however, dated rebruary 10th, 1965 addressed to counsel for the respondent and signed by

THE SUPERVISOR OF THE MUNICIPAL ADMINISTRATION BRANCH OF THE DEPARTMENT OF MUNICIPAL AFFAIRS WAS FILED WITH THE BOARD. WE CAN FIND NOTHING IN THIS LETTER WHICH LENDS SUPPORT TO THE ARGUMENT OF COUNSEL.

Counsel for the respondent did not refer to The Department of Municipal Affairs Act R.S.O. 1960 c.98. In our view, however, the respondent is a municipality as defined in section 1(f) of that Act. We accordingly do not accept the respondent's argument.

WE FURTHER FIND, ON THE EVIDENCE BEFORE US, THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE EMPLOYEES OF THE RESPONDENT."

On April 14, 1965, the Board further endorsed the Record as follows:-

"For purposes of clarity the Board declares that Ross Stoner exercises managerial functions within the meaning of section 1(3)(B) of The Labour Relations Act and is not included in the bargaining unit."

BOARD MEMBER G. RUSSELL HARVEY WHILE NOT DISSENTING SAID:-

"I concur with the decision of the majority except with Respect to the declaration concerning Ross Stoner. I find on the evidence contained in the report of the Examiner that Stoner does not exercise managerial functions within the meaning of section 1(3) (b) of the Labour Relations Act and, accordingly, I would have included him in the bargaining unit."

9955-64-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. AMERICAN STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT) v. UNITED STEELWORKERS OF AMERICA (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant applied on February 10th, 1965 to be certified as bargaining agent for all stationary engineers and persons primarily engaged as their helpers in the power houses of the respondent at its Junction Road plant at Toronto, save and except the chief engineer and persons above the rank of chief engineer and requested that a pre-hear-ing representation vote be taken.

THE BOARD ON FEBRUARY 26TH, 1965, DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED PENDING A FURTHER DIRECTION BY THE BOARD.

THIS MATTER CAME ON FOR HEARING TO DETERMINE THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT.

THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY REPRESENTED BY THE INTERVENER AND ARE PART OF AN OVER-ALL

INDUSTRIAL UNIT REPRESENTED BY THE INTERVENER WHICH WAS CERTIFIED BY THE BOARD ON APRIL 26TH, 1962.

THE APPLICANT ARGUED THAT STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT ARE ENTITLED TO BE REPRESENTED BY THE APPLICANT CRAFT UNION BECAUSE OF THE RECOGNIZED CRAFT STATUS OF THE STATIONARY ENGINEERS. THE APPLICANT CALLED MR. IHORNE, ONE OF THE STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT. TO TESTIFY ON ITS BEHALF AND MR. HORNE STATED THAT STATIONARY ENGINEERS WISH TO BE REPRESENTED BY THE APPLICANT. MR. THORNE COMPLAINED THAT THE STATIONARY ENGINEERS AT PRESENT. WORK A 42 HOUR WEEK. WHEREAS THE OTHER EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT WORK A 40 HOUR WEEK. HOWEVER, MR. THORNE ALSO COMPLAINED THAT PRIOR TO THE INTERVENER BEING CERTIFIED AS BARGAINING AGENT. THE STATIONARY ENGINEERS WERE ABLE TO WORK A 60 HOUR WEEK AND THEREBY RECEIVE A GREATER PAY PACKAGE AT THE END OF THE WEEK. MR. THORNE ACKNOWLEDGED HOWEVER, THAT THE INTERVENER HAD SUCCEEDED IN CAUSING THE STATIONARY ENGINEERS TO RECEIVE A CONSIDERABLE HOURLY INCREASE AT THE TIME THEIR WORK WEEK WAS REDUCED.

THE RESPONDENT, AT THE HEARING, TOOK THE POSITION THAT
IT PREFERRED TO DEAL WITH ONE BARGAINING AGENT WHICH REPRESENTED
ALL ITS EMPLOYEES INCLUDING THE STATIONARY ENGINEERS.

THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT ARE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH CAME INTO EFFECT ON MARCH 7TH. 1963. THE COLLECTIVE AGREEMENT HAS A SEPARATE WAGE SCALE COVERING THE CLASSIFICATION OF STATIONARY ENGINEERS UNDER WHICH CLASSIFICATION STATIONARY ENGINEERS HAVE RECEIVED A GREATER INCREASE (ALONG WITH OTHER SKILLED TRADES) THAN THE GENERAL INCREASE GRANTED TO THE PRODUCTION EMPLOYEES. UNDER THE COLLECTIVE AGREEMENT THE STATION-ARY ENGINEERS ENJOY SENIORITY RIGHTS ON A PLANT WIDE BASIS AND ALSO ON A UNIT BASIS AS PART OF THE MAINTENANCE UNIT OF THE RESPONDENT. AT LEAST ONE OF THE STATIONARY ENGINEERS HAS EXER-CISED HIS SENIORITY RIGHTS ON THE PLANT WIDE BASIS AND HAS TAKEN EMPLOYMENT IN A PRODUCTION DEPARTMENT DURING THE SUMMER MONTHS WHEN HE WOULD HAVE OTHERWISE BEEN LAID-OFF. THE STATIONARY ENGINEERS ARE ABLE TO PARTICIPATE IN THE CHOICE OF THE BARGAINING COMMITTEE OF THE INTERVENER, AND THEY HAVE A UNION STEWARD FOR THE MAINTENANCE UNIT OF WHICH THEY ARE A PART. THE NEW PROPOSALS SUBMITTED BY THE INTERVENER DURING THE CURRENT NEGOTIATIONS FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT CONTAIN SPECIAL PROVISIONS FOR THE CLASSIFICATION OF STATIONARY ENGINEERS INCLUDING A PROVISION TO REDUCE THE WORK WEEK TO 40 HOURS TO PLACE THEM ON A PAR WITH THE OTHER EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT. TO PROVIDE A SHIFT PREMIUM FOR STATIONARY ENGINEERS AND TO PROVIDE FOR THE PAYMENT OF A RATE OF PAY FOR STATIONARY ENGINEERS CONSIS-TENT WITH THE RATES PRESENTLY PAID TO STATIONARY ENGINEERS THROUGHOUT METROPOLITAN TORONTO, ALL OF WHICH APPARENTLY ARE MATTERS OF CONCERN TO THE STATIONARY ENGINEERS. THERE ARE NO OUTSTANDING GRIEVANCES FILED ON BEHALF OF ANY OF THE STATIONARY ENGINEERS UNDER THE TERMS OF THE COLLECTIVE AGREEMENT.

THE LENGTH OF CONTINUOUS REPRESENTATION BY THE INTERVENER OF THE STATIONARY ENGINEERS. WHICH IN THIS CASE COVERS A PERIOD OF ONLY 2 YEARS AND THE TERM OF ONE COLLECTIVE AGREEMENT. IS A SIGNIFICANT FACTOR TO BE CONSIDERED BY THE BOARD IN DETERMINING HOW IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6 (2) OF · THE LABOUR RELATIONS ACT. HOWEVER, IT IS ONLY ONE OF THE FACTORS TO BE CONSIDERED. IN THIS RESPECT IT IS NOT WITHOUT INTEREST TO NOTE THAT THE INTERVENER REPRESENTS THE STATIONARY ENGINEERS AS PART OF AN OVER-ALL INDUSTRIAL UNIT IN TWO OTHER PLANTS OPERATED BY THE RESPONDENT IN METROPOLITAN IORONTO AND ALSO THAT THE STATIONARY ENGINEERS ARE REPRESENTED AS PART OF AN OVER-ALL INDUSTRIAL UNIT REPRESENTED BY THE INTERNATIONAL UNION. UNITED AUTOMOBILE. AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AT THE RESPONDENT'S PLANT IN WINDSOR. IN OTHER RESPECTS, HOWEVER, THE FACTS OF THIS CASE FALL ON ALL FOURS WITH THE FACTS WHICH LED THE BOARD TO REACH ITS DECISION IN THE LILY CUP CASE (ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, JANUARY 1961 P. 370) AND THE CANADA FOUNDRIES AND FORGINGS CASE (1961) C.C.H. CANADIAN LABOUR LAW REPORTER 916,203 C.L.S. 76-753, THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE #1501-61-R AND DARLING & COMPANY OF CANADA LIMITED CASE, BOARD FILE #2073-61-R, AND THE AMERICAN-STANDARD PRODUCTS (CANADA) LTD., CASE. (LANSDOWNE PLANT) BOARD FILE #2435-61-R.

HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE CASES ABOVE REFERRED TO AND TO THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER (ALBEIT SHORT) AS EVIDENCED BY THE SEPARATE WAGE SCHEDULES FOR STATIONARY ENGINEERS IN THE COLLECTIVE AGREEMENT, THE SENIORITY PROVISIONS CONTAINED IN THE COLLECTIVE AGREEMENT AFFECTING THE STATIONARY ENGINEERS. THE FACT THAT THE STATIONARY ENGINEERS HAVE RECEIVED A GREATER INCREASE THAN THE PRODUCTION EMPLOYEES PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT. THE FACT THAT THE STATIONARY ENGINEERS ARE ENTITLED TO PARTICIPATE IN THE CHOICE OF A BARGAIN-ING COMMITTEE. THE FACT THAT THE STATIONARY ENGINEERS ARE, AS PART OF THE MAINTENANCE GROUP, REPRESENTED BY A UNION STEWARD, THE FACT THAT THERE ARE NO OUTSTANDING OR UNPROCESSED GRIEVANCES FILED BY STATIONARY ENGINEERS UNDER THE COLLECTIVE AGREEMENT, THE FACT THAT THE INTERVENER'S PROPOSALS FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT CONTAIN SPECIFIC IMPROVEMENTS FOR THE STATIONARY ENGINEERS. AND THE FACT THAT IT HAS BEEN THE PRACTICE IN THREE OTHER OF THE RESPONDENT'S PLANTS TO INCLUDE THE STATIONARY ENGINEERS IN AN OVER-ALL INDUSTRIAL BARGAINING UNIT, THE BOARD FINDS THAT THE STATIONARY ENGINEERS ARE NOT BEING IGNORED BY THE INTERVENER AND THAT THE INTERVENER IS ACTIVELY REPRESENTING THE STATIONARY ENGINEERS AS CONTEMPLATED BY THE concluding words of section 6 (2) of the Act. The Board is THEREFORE OF OPINION THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING IN THE CIRCUMSTANCES OF THIS CASE.

The Board accordingly finds pursuant to the provisions of section  $6\ (2)$  of the Act that it should not exercise its discretion in favour of the applicant.

#### THIS APPLICATION IS THEREFORE DISMISSED."

10105-04-F: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION.
AFI-010-0.C (APPLICANT) v. WESTMINSTER HOTEL LIMITED (RESPONDENT). (128 EMPLOYEE

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant seeks to be certified for a bargaining unit of employees of the respondent in certain designated classifications who it claims are engaged at the trade of cooks. The applicant argues that the unit which it requests is a craft unit within the meaning of section 6(2) of the Labour Relations Act.

AMONG THE EVIDENCE RELIED ON BY THE APPLICANT TO SUB-STANTIATE ITS CLAIM THAT THE PERSONS AFFECTED CONSTITUTE A CRAFT UNIT. ARE TWO CERTIFICATES GRANTED BY THIS BOARD. THE FIRST OF THESE CERTIFICATES WAS GRANTED IN 1947 TO THE CHEFS, COOKS & PASTRY COOKS UNION. LOCAL 7. FOR EMPLOYEES OF THE CLUB NORMAN OF TORONTO. THE UNIT IN THIS CERTIFICATE IS DESCRIBED AS "ALL CRAFTSMEN ENGAGED IN THE ART OF COOKING AND SERVING IN THE RESTAURANT KITCHEN OF THE RESPONDENT, SAVE AND EXCEPT DISH-WASHERS, POTWASHERS AND PANTRY GIRLS41. THE RECORDED DECISION OF THE BOARD IN THE CLUB NORMAN CASE, HOWEVER, DOES NOT MENTION ANY OF THE CIRCUMSTANCES OF THE CASE, NOR DOES IT DISCLOSE WHETHER THE UNIT WAS GRANTED AS A RESULT OF THE AGREEMENT OF THE PARTIES OR OTHERWISE. THE SECOND CERTIFICATE REFERRED TO BY THE APPLICANT WAS GRANTED IN 1953 TO THE CAMP CULINARY. RESTAURANT EMPLOYEES' AND SERVICE WORKERS' LOCAL 891, OF THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL Union for a unit of employees of the Canadian Dredge & Dock Co. LIMITED. THIS UNIT IS DESCRIBED AS "ALL COOKS AND COOK!S HELPERS IN THE EMPLOY OF THE RESPONDENT ON ITS TUGS AND DREDGES IN ITS PORT ARTHUR DIVISION". IT WOULD APPEAR FROM THE BOARD'S RECORDS IN THE LATTER CASE THAT THE PARTIES WERE IN PRIOR AGREEMENT WITH THIS DESCRIPTION OF THE UNIT. THERE IS NO EVIDENCE OF WHAT COLLECTIVE BARGAINING, IF ANY, TOOK PLACE BETWEEN THE PARTIES SUBSEQUENT TO THE GRANTING OF THESE TWO CERTIFICATES.

IN ADDITION TO THE TWO CERTIFICATES IN QUESTION, THE APPLICANT ALSO SUBMITTED AS EVIDENCE IN SUPPORT OF ITS CASE, A COLLECTIVE AGREEMENT EFFECTIVE JULY 7TH, 1964, BETWEEN THE JOINT EXECUTIVE BOARD OF THE HOTEL AND RESTAURANT EMPLOYEES! AND BARTENDERS INTERNATIONAL UNION AFL-CIO IN CALIFORNIA, U.S.A., REPRESENTING THE CULINARY WORKERS! ALLIANCE LOCAL 31, COOKS! UNION LOCAL 228, AND THE BARTENDERS! UNION, LOCAL 52. THE WAGE SCHEDULE OF THIS AGREEMENT PERTAINING TO PERSONS WITHIN THE JURISDICTION OF THE COOKS! LOCAL INDICATES THAT IT APPLIES TO VARIOUS PERSONS WITHIN THE CLASSIFICATION OF COOKS. THIS AGREEMENT APPEARS TO REPRESENT JOINT BARGAINING BY THE EXECUTIVE BOARD FOR A COMPOSITE UNIT OF CULINARY WORKERS, COOKS AND BARTENDERS.

APART FROM ANY OTHER CONSIDERATIONS, THE BOARD SEXPERIENCE OVER THE YEARS IN RESPECT TO BARGAINING UNITS FOR THE HOTEL AND RESTAURANT INDUSTRIES, OF WHICH WE ARE CONSTRAINED TO TAKE NOTICE, DOES NOT SUGGEST THAT PERSONS FALLING WITHIN THE CLASSIFICATIONS IN QUESTION HAVE, AS REQUIRED FOR THE APPLICATION OF SECTION 6 (2), COMMONLY BARGAINED SEPARATELY AND APART FROM OTHER EMPLOYEES. ON THE CONTRARY, THE PATTERN OF BARGAINING IN THESE INDUSTRIES, AS MANIFESTED TO THIS BOARD IN PAST CASES, IS THAT THESE PERSONS HAVE INVARIABLY BEEN INCLUDED WITH PERSONS OF OTHER CLASSIFICATIONS IN INDUSTRIAL—TYPE UNITS. WE ARE COMPELLED TO FIND THAT THE UNITS DESCRIBED IN THE TWO CERTIFICATES IN QUESTION REPRESENT BUT TWO ISOLATED EXCEPTIONS TO THE EXPERIENCE OF THE BOARD AS TO THE HISTORY AND PREVAILING PRACTICE OF BARGAINING IN THE HOTEL AND RESTAURANT INDUSTRIES.

WE ARE NOT PERSUADED THAT THE EVIDENCE ADDUCED BY THE APPLICANT IN THIS CASE, INCLUDING THE TWO CERTIFICATES AND AGREEMENT IN QUESTION, ESTABLISHES ANY SUFFICIENT BASIS FOR A FINDING AT THIS TIME THAT THE PERSONS SOUGHT TO BE INCLUDED IN THE UNIT IN QUESTION FULFIL THE REQUIREMENTS OF SECTION 6 (2) OF THE ACT. THE EVIDENCE PRESENTED DOES NOT SATISFY US THAT COOKS COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT. FURTHER, WE ARE UNABLE TO FIND THAT THE UNIT REQUESTED IS OTHERWISE APPROPRIATE FOR COLLECTIVE BARGAINING.

THE APPLICATION IS THEREFORE DISMISSED."

# SUCCESSOR STATUS - INDEXED ENDORSEMENT

9960-64-R: LAVERENDRYE HOSPITAL EMPLOYEES UNION LOCAL 795 (APPLICANT) V. LAVERENDRYE HOSPITAL (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application under section 47 of The Labour Relations Act for a declaration that Laverendrye Hospital Employees, Local Union 795, Canadian Union of Public Employees has acquired the RIGHTS, PRIVILEGES AND DUTIES OF LAVERENDRYE HOSPITAL EMPLOYEES, Local Union 795, National Union of Public Employees.

IN SUPPORT OF ITS APPLICATION COUNSEL FOR THE APPLICANT RELIED ON THE FINDINGS OF THE BOARD IN ITS DECISION DATED MAY 29TH, 1964, IN THE SUDBURY PUBLIC SCHOOL BOARD CASE (BOARD FILE No. 8063-63-6). THE APPLICANT ALSO FILED THE CHARTER ISSUED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES TO LOCAL UNION 795, LAVERENDRYE HOSPITAL EMPLOYEES.

The decision of the Board that heard The <u>Sudbury Public School</u>
Board Case, on the evidence before it, made certain findings of fact
which it found established that on or about September 24th, 1963,

THERE WAS A MERGER OF THE NATIONAL UNION OF PUBLIC EMPLOYEES AND THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES INTO A NEW TRADE UNION, THE CANADIAN UNION OF PUBLIC EMPLOYEES. BECAUSE OF THE PARTICULAR CIRCUMSTANCES OF THAT CASE, HOWEVER, THE BOARD WAS NOT CALLED UPON TO MAKE AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES HAD SUCCEEDED TO THE BARGAINING RIGHTS HELD BY THE NATIONAL UNION OF PUBLIC EMPLOYEES AND THE NATIONAL UNION OF PUBLIC SERVICE EMPLOYEES.

Counsel for the respondent did not challenge the findings of fact in The Sudbury Public School Board Case (supra) which the Board found established that a merger of the National Union of Public Employees and the National Union of Public Service Employees had taken place to form the Canadian Union of Public Employees, with the exception of the finding that the merger had been approved by the Locals of both the Canadian Union of Public Employees and the Canadian Union of Public Service Employees. Counsel submitted that before the Board made the Declaration applied for by the applicant it was incumbent upon the applicant to adduce evidence to satisfy the Board that the applicant, in fact, had approved of the merger in the required form.

IN THE CANADIAN CANNERS LIMITED (STRATHROY) CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER \*55-\*59, T16,056, C.L.S. 76-532, THE BOARD MADE THE FOLLOWING STATEMENT WITH REGARD TO THE EVIDENCE TO BE SUBMITTED IN SUPPORT OF APPLICATIONS BY TRADE UNIONS CLAIMING SUCCESSOR STATUS:

THE BOARD WILL REQUIRE, AMONG OTHER THINGS, PROOF THAT THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION HAS BEEN AGREED TO BY THE PREDECESSOR TRADE UNION. SUCH PROOF MAY TAKE THE FORM OF EVIDENCE THAT MERGER. AMALGAMATION OR TRANSFER OF JURISDICTION WAS APPROVED AT A MEETING OF THE PREDECESSOR TRADE UNION. IF SUCH IS THE CASE THE BOARD WILL REQUIRE THAT THE MEMBERS OF THE PREDECESSOR BE GIVEN EFFECTIVE NOTICE OF THE CALLING OF THE MEETING PREFERABLY, ALTHOUGH NOT INVARIABLY, IN WRITING. IN ADDITION TO THE TIME, DATE AND PLACE OF MEETING, THE NOTICE SHOULD STATE THE PURPOSE FOR WHICH THE MEETING IS BEING CALLED.

THE BOARD HAS CAREFULLY CONSIDERED THE ARGUMENTS OF COUNSEL. IN VIEW OF THE CHALLENGE MADE BY COUNSEL FOR THE RESPONDENT, AND THE EVIDENTIARY REQUIREMENTS IN THIS TYPE OF APPLICATION, WE FIND THAT THERE IS NO EVIDENCE WHICH SATISFIES US THAT THE MEMBER OF THE PREDECESSOR TRADE UNION, LAVERENDRYE HOSPITAL EMPLOYEES, LOCAL UNION 795, NATIONAL UNION OF PUBLIC EMPLOYEES, HAD THE OPPORTUNITY TO APPROVE, OR HAVE APPROVED, OR ARE BOUND BY THE TERMS OF THE MERGER.

THE APPLICATION, ACCORDINGLY, IS DISMISSED.

THE DISMISSAL OF THIS APPLICATION SHALL NOT ACT AS A BAR TO ANY SUBSEQUENT APPLICATION BY THE APPLICANT FOR A DECLARATION OF SUCCESSOR STATUS.

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

" DISSENT

In view of the issuance of a charter by the Canadian Union of Public Employees to Local Union 795, Laverendrye hospital Employees, and having regard to the fact that none of the members of Local 795 expressed opposition to this application, although they had an opportunity to do so, I am satisfied that there is sufficient evidence before the Board to make a finding that Local 795 approved of and is bound by the merger of the National Union of Public Employees and the National Union of Public Service Employees to form the Canadian Union of Public Employees.

Accordingly, I would have made the declaration applied for by the applicant."

# INDEXED ENDORSEMENTS - SECTION 79A

9970-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. DE VUONO & GALLUCCI (EMPLOYER).

- AND -

9974-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. CARROM CONTRACTORS (EMPLOYER).

- AND -

9975-64-M: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) V. CARAVAGGIO CONSTRUCTION COMPANY LIMITED (EMPLOYER).

- AND -

9976-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. E. BIFOLCHI (EMPLOYER).

- AND -

9977-64-M: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. ANGLO CONSTRUCTION COMPANY (EMPLOYER).

- AND -

2978-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION

OF THE UNITED STATES AND CANADA (TRADE UNION) V. WILMAR CONTRACTORS LIMITED (EMPLOYER).

- AND -

9979-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. WILLOW CONSTRUCTION COMPANY ...IMITED (EMPLOYER).

- AND -

9981-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) V. TORONTO ZENITH CONTRACTING IMITED (EMPLOYER).

- AND -

9983-64-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. ROYCE CONTRACTORS (EMPLOYER).

- AND -

9987-64-14: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) V. HILLMOUNT CONTRACTORS (EMPLOYED

- AND -

9989-61-M: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (TRADE UNION) v. F. GRECO & SONS LIMITED CEMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE ABOVE CASES, ALONG WITH A NUMBER OF OTHER CASES, WERE REFERRED TO THE BOARD BY THE HONOURABLE THE MINISTER OF LABOUR, PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT. ALL THE CASES SO REFERRED WERE LISTED SEPARATELY FOR HEARING AND ALL PARTIES WERE GIVEN AN OPPORTUNITY TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS TO THE BOARD. IT IS PROPOSED TO DEAL WITH THE ABOVE-MENTIONED CASES IN ONE DECISION BECAUSE ALL THE PARTIES INVOLVED WERE REPRESENTED AT THE HEARINGS AND BECAUSE THE QUESTION FOR CONSIDERATION BY THE BOARD IS THE SAME IN EACH CASE.

HE FOLLOWING ARE THE FACIS RELATING TO THE CASES HERE UNDER CONSIDERATION:

- (1) IT IS AGREED THAT THE COLLECTIVE AGREEMENTS IN QUESTION WERE SIGNED BY THE EMPLOYERS AS A RESULT OF VOLUNTARY RECOGNITION OF THE UNION ON THEIR PART AND THAT THE UNION WAS NOT THE CERTIFIED BARGAINING AGENT FOR ANY OF THEIR EMPLOYEES.
- (2) THE UNION ENTERED INTO COLLECTIVE AGREEMENTS WITH EACH OF THE ABOVE NAMED CONTRACTORS IN OCTOBER AND NOVEMBER

of 1963. It is admitted that each of the contractors signed the collective agreements and that a document known as "Schedule A" is part of each collective agreement. It is also admitted that the agreements have run for at least a year. While reference is made to the Toronto and District Concrete Drainage Contractors' Association in the said Schedule A, it is also admitted that none of the documents in question was signed by persons on behalf of this Association.

THE QUESTIONS REFERRED TO THE BOARD WERE (1) WHETHER THE TRADE UNION WAS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYERS PURSUANT TO SECTION 40, (2) WHETHER THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYERS TO BARGAIN WITH IT AND (3) SUCH OTHER QUESTIONS AS MAY ARISE GOING TO THE AUTHORITY OF THE MINISTER TO MAKE THE APPOINTMENT.

THE MATERIAL PARTS OF THE COLLECTIVE AGREEMENTS ARE IDENTICAL.

PARAGRAPH 2 PROVIDES AS FOLLOWS:

(B) THE UNION AGREES THAT IT WILL RELINQUISH ITS BARGAINING RIGHTS AS REPRESENTATIVE OF THE EMPLOYEES HEREIN ON DECEMBER 31, 1964, IF AT THAT TIME IT HAS NOT SIGNED COLLECTIVE AGREEMENTS WITH 75% OF THE FIRMS SHOWN ON SCHEDULE A ANNEXED HERETO.

PARAGRAPHS 2, 3 AND 4 OF SCHEDULE A TO THE AGREEMENT PROVIDE:

2. IT IS FURTHER UNDERSTOOD THAT ALL CONTRACTORS WHO BECOME A PARTY TO THE COLLECTIVE AGREEMENT SHALL STRICTLY ADHERE TO ALL THE TERMS AND CONDITIONS SET OUT IN THE AGREEMENT.

ANY CONTRACTOR FAILING TO DO SO AGREES THAT THE UNION WILL NOT RELINQUISH ITS BARGAINING RIGHTS WITH ANY CONTRACTOR VIOLATING ANY OF THE TERMS AND CONDITIONS OF THE AGREEMENT IN THE EVENT THE UNION DOES NOT ACHIEVE THE OBJECTIVES AS SET OUT IN SECTION 2(B) OF THE COLLECTIVE AGREEMENT.

- 3. THE UNION AGREES IT WILL MAKE THE SINCEREST EFFORT TO OBTAIN CERTIFICATION WITH UNORGANIZED CONTRACTORS IN THE CONCRETE INDUSTRY. REGULAR MONTHLY MEETINGS OF BOTH PARTIES SHALL TAKE PLACE TO REVIEW PROGRESS BEING MADE.
- 4. THE TORONTO AND DISTRICT CONCRETE DRAINAGE CONTRACTORS! ASSOCIATION ALSO AGREE IT IS TO THEIR BENEFIT TO INCREASE THEIR MEMBERSHIP AND WILL MAKE THE SINCEREST EFFORT TO DO SO, AND WILL NOT HINDER THE UNION IN ITS ENDEAVOURS TO ORGANIZE THE CONCRETE INDUSTRY.

In connection with each of the above enumerated cases, It is admitted by the union that it failed to sign collective agreements with 75% of the contractors listed on the said Schedule A.

THE CONTRACTORS IN EACH OF THE CASES HERE BEING CONSIDERED THEREFORE SUBMIT THAT AS OF DECEMBER 31ST, 1964 THE UNION HAS RELINQUISHED ITS BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES IN THE BARGAINING UNITS DEFINED IN THE COLLECTIVE AGREEMENTS.

THE UNION'S SOLE DEFENCE TO THIS CLAIM IS BASED ON THE PROVISIONS OF PARAGRAPH 2 OF SCHEDULE A SET OUT ABOVE. THE UNIONS CONTENDS THAT EACH OF THE CONTRACTORS IS IN BREACH OF THIS PARAGRAPH IN THAT EACH HAS NOT STRICTLY ADHERED TO THE UNION SECURITY CLAUSES CONTAINED IN THE COLLECTIVE AGREEMENTS.

IN SUPPORT THEREOF THE UNION FILED COPIES OF LETTERS WHICH IT ALLEGED HAD BEEN WRITTEN TO THE CONTRACTORS. HOWEVER, THE UNION WAS UNABLE TO PRODUCE ANY WITNESS WHO COULD IDENTIFY THE LETTERS OR TESTIFY RESPECTING THE ALLEGED VIOLATIONS BY THE CONTRACTORS, AND CONSEQUENTLY, EVEN IF IT IS ASSUMED THAT THE LETTERS IN QUESTION WOULD, IF IDENTIFIED, HAVE CONSTITUTED SOME EVIDENCE OF A VIOLATION, THERE IS IN FACT NO EVIDENCE BEFORE THE BOARD ON WHICH THE APPLICANT IS ABLE TO RELY TO SUPPORT ITS CONTENTIONS.

THIS BEING THE CASE, IT IS NOT NECESSARY FOR THE BOARD TO RULE ON THE PRELIMINARY MOTION MADE ON BEHALF OF THE CONTRACTORS RESPECTING THE RIGHT OF THE UNION AT THIS TIME TO ALLEGE VIOLATIONS OF THE AGREEMENTS BY THE VARIOUS CONTRACTORS.

Thus, the sole question remaining for consideration by the Board is the effect to be given to paragraph 2(b) of the agreement. In other words, has the union relinquished its bargaining rights by reason of its failure to sign collective agreements with 75% of the contractors listed on Schedule A to the agreement? Although the union did not argue this question, being content to rely on its allegations of violations of the agreements by the contractors, the Board has nevertheless given the matter its most earnest consideration. If attention is directed solely to the agreements, that would appear to end the matter, because in clear and unambiguous language the union agrees to relinquish its bargaining rights on a named date.

However, does such an agreement run counter to anything contained in The Labour Relations Act? While an agreement to relinquish bargaining rights prior to the expiration of the first year of a collective agreement might well be contrary to section 39 of the Act (dealing with a minimum term for collective agreements) no such question arises in the present case, since the agreements have run for more than a year and are not for an unspecified term. After carefully reviewing the other provisions of the Act, we are unable to find any other provision which, in

THE CIRCUMSTANCES OF THESE CASES. CAN BE SAID TO BE IN CONFLICT WITH THE CLAUSES IN QUESTION IN THE AGREEMENTS. WHILE IT IS TRUE THAT THE ACT PROVIDES FOR TERMINATION OF BARGAINING RIGHTS IN A MOST DETAILED WAY. WE ARE UNABLE TO CONCLUDE FROM THE LANGUAGE AND AFTER CONSIDERING THE ACT AS A WHOLE, THAT IT WAS INTENDED THAT BARGAINING RIGHTS COULD BE TERMINATED ONLY IN ACCORDANCE WITH THE METHODS SET OUT IN THE ACT. INDEED, THIS BOARD HAS ACKNOWLEDGED THIS TO BE THE CASE IN A NUMBER OF DECISIONS DEALING WITH ABANDON-MENT OF BARGAINING RIGHTS BY A TRADE UNION. (SEE, FOR EX-AMPLE, THE CANADA SAND PAPER CASE, (1958) CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '55-'59, ¶16,111, C.L.S. 76-601.) THIS POLICY WAS IN EXISTENCE BEFORE AND IS STILL APPLIED SEPARATE AND APART FROM THE PROVISION CONTAINED IN SECTION 43(6) of the Act. under which on an application for termination UNDER SECTION 43 THE BOARD MAY TERMINATE BARGAINING RIGHTS WITHOUT A REPRESENTATION VOTE IF THE TRADE UNION CONCERNED INFORMS THE BOARD THAT IT DOES NOT DESIRE TO CONTINUE TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

Having regard, therefore, to the above considerations, we answer question #2 set out above as follows: The trade union is not entitled to require the employers in the cases here being considered to bargain with it.

We make no attempt to answer question #1, since the answer to question #2 would appear to be sufficient to dispose of the matter.

WE SHOULD LIKE TO EMPHASIZE THAT OUR CONCLUSIONS ARE BASED ON THE PARTICULAR CIRCUMSTANCES OF THE CASES INCLUDING THE FACT THAT BARGAINING RIGHTS WERE OBTAINED BY THE UNION AS A RESULT OF VOLUNTARY RECOGNITION. WE EXPRESS NO OPINION AS TO WHETHER THE SAME RESULTS WOULD FOLLOW IF BARGAINING RIGHTS HAD BEEN OBTAINED THROUGH CERTIFICATION."

# INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION

10186-64-R: United Packinghouse, Food & Allied Workers (Applicant) v. Stafford Foods Limited (Respondent).

ON APRIL 15, 1965 THE BOARD DETERMINED A BARGAINING UNIT AS FOLLOWS: ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF.

On April 23, 1965 the Board endorsed the Record as follows:-

"The respondent, by its letter dated April 22nd, 1965, has requested the Board to review its decision dated April 15th, 1965, in this matter.

SINCE THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND SINCE THE BOARD CONSIDERED ALL THE MATTERS RAISED IN THE LETTER FROM THE RESPONDENT PRIOR TO REACHING ITS DECISION DATED APRIL 15TH, 1965, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED APRIL 15TH, 1965, IN THIS MATTER. THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

THE BOARD POINTS OUT, HOWEVER, THAT THE WITNESSES WHO SUPPORT A PETITION ARE REQUIRED BY THE PROVISIONS OF SECTION 11 (3) OF THE BOARD'S RULES OF PROCEDURE TO TESTIFY CONCERNING

- (a) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE; AND
- (B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT WAS OBTAINED.

IT IS ABUNDANTLY CLEAR THAT WITNESSES MUST TESTIFY TO BOTH OF THESE FACTORS BEFORE THE BOARD WILL BE REQUIRED TO GIVE EFFECT TO A DOCUMENT FILED BY EMPLOYEES WHEREIN THE MEMBERSHIP POSITION OF AN APPLICANT TRADE UNION IS CHALLENGED."

#### ADDENDUM

THE FOLLOWING PRE-HEARING VOTE APPLICATION WAS INADVERTENTLY OMMITTED FROM THE DECEMBER 1964 MONTHLY REPORT.

9592-64-R: International Union, United Automobile, Aerospace and Agricultura implement Workers of America (UAW) (Applicant) v. Lightning Fastener Company Limited (Respondent) v. The Shop Committee of the Lightning Fastener Company Limited (Intervener).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN AND ABOUT RESPONDENT'S MANUFACTURING PLANT LOCATED AT ST. CATHARINES, SAVE AND EXCEPT F PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, ENGINEERING STAFF AND PLANT TECTION STAFF." (312 EMPLOYEES).

Number of	NAMES ON REVISED VOTERS! LIST			302
NUMBER OF	BALLOTS CAST		301	
Number of	BALLOTS SEGREGATED AND			
NOT COUN	TED	1		
NUMBER OF	BALLOTS MARKED IN			
FAVOUR OF	APPLICANT	109		
NUMBER OF	BALLOTS MARKED IN			
FAVOUR OF	INTERVENER	191		

THE APPLICATION WAS DISMISSED BY THE BOARD.

#### STATISTICAL TABLES FOR APRIL 1965

TABLE | APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed					
		APRIL 1965	1965-66	FISCAL YEAR 1964-65			
1.	CERTIFICATION	106	106	74			
11.	DECLARATION TERMINATING BARGAINING RIGHTS	5	5	6			
111.	DECLARATION OF SUCCESSOR STATUS	2	2	-			
۱۷.	Declaration That Strike Unlawful	3	3	-			
٧.	Declaration That Lock- Out Unlawful	-	-	-			
VI.	Consent to Prosecute	5	5	5			
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT						
(Section 65)		11	11	8			
/111.	MISCELLANEOUS	10	10				
	TOTAL	142	142	93			

TABLE II
HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number					
	APRIL 1965	lst	Мо <b>м</b> тн 1965-66		FISCAL 1964-65	YEAR
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	106		106		94	

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

# BY MAJOR TYPES

		Number Disposed of			
		APRIL 1s 1965	T MONTH OF 1965-66	FISCAL YEAR 1964-65	
1.	CERTIFICATION	90	90	76	
11.	Declaration Terminating Bargaining Rights	2	2	4	
11.	Declaration of Successor Status	4	4	1	
1 V •	DECLARATION THAT STRIKE UNLAWFUL	1	1	-	
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	~		
VI.	Consent to Prosecute	2	2	3	
V11.	Complaint of Unfair Practice in Employment (Section 65)	9	9	20	
VIII.	MISCELLANEOUS	26	_26	_1	
	TOTAL	<u>134</u>	<u>134</u>	105	

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE

#### AND DISPOSITION

		Number of Applications			Nur	Number of Employees*				
		APRIL 1965	1sт Мтн 1965-66	FISCAL YR. 1964-65		lsт Мтн 1965-66				
	CERTIFICATION									
•	GRANTED	75	75	58	2841	2841	2326			
	DISMISSED WITHDRAWN	10	10	13	241	241 124	1601 			
	TOTAL	90	90	_76	<u>3206</u>	<u>3206</u>	<u>3999</u>			
	T									
•	TERMINATION OF BARGAINING RIGHTS									
	GRANTED Dismissed	<del>-</del> 2	2	3	_ 26	<b>-</b> 26	33			
	WITHDRAWN		end Complement	_1		-	_64			
	TOTAL	2	_2	_4	26	_26	_97			

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

### TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

		Number of Applications			
		APRIL 1965	lsт Мтн 1965-66	FISCAL YR. 1964-65	
III. Declaration That Strike					
UNLAWFUL					
GRANTED		-	-	-	
Dismissed Withdrawn		7	-	_	
WIIHDRAWN					
TOTAL	-	1	1	Company of the Compan	
IV. DECLARATION THAT LOCKOUT					
UNLAWFUL					
GRANTED		_	-	_	
DISMISSED		-	-	-	
WITHDRAWN					
TOTAL	-				
V. Consent to Prosecute					
GRANTED		1	1	2	
SMISSED WITHDRAWN		7	1	7	
WITHURAWN					
TOTAL		2	2	3	

#### TABLE V

# REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

#### OF BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes				
	APRIL 1965	lsт Мтн 1965-66	FISCAL YR. 1964-65		
CERTIFICATION AFTER VOTE*					
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	3 1 -	3 1 -	4 2 <del>-</del>		
DISMISSED AFTER VOTE					
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	2 _1	2 1	- 9 		
TOTAL	_7	_7	15		

<sup>\*</sup> INCLUDES APPLICANT—INTERVENER APPLICATIONS IN WHICH BOTH
APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER
APPLICANT OR INTERVENER IS CERTIFIED.

#### TABLE VI

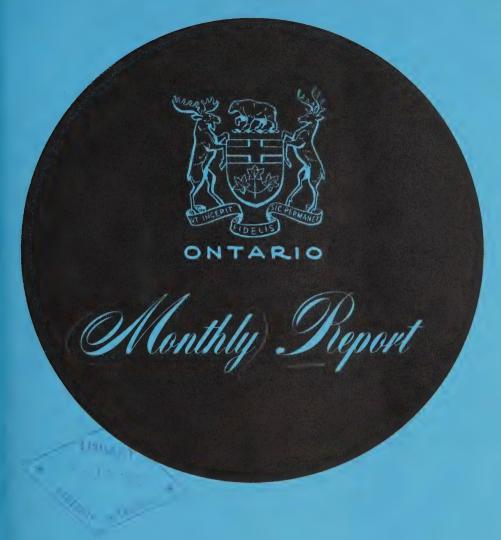
#### REPRESENTATION VOTES IN TERMINATION APPLICATIONS & SPUSED OF

#### BY THE ONTARIO LABOUR RELATIONS BOARD

				NUMBER OF	Votes	
			APRIL 1965	1st MTH 1965-66		FISCAL YR. 1964-65
*Respondent Respondent		Successful Unsuccessful	-			2
	TOTAL			Section of the sectio		2

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.





# NTARIO LABOUR RELATIONS BOARD

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### APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### DURING MAY 1965

#### BARGAINING AGENTS CERTIFIED DURING MAY

#### No VOTE CONDUCTED

10029-64-R: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. The Board of Education for the City of Toronto (Respondent) v. Toronto Board of Education Caretakers' Union, Local 134, Canadian Union of Public Employees (Intervener).

UNIT: "ALL JOURNEYMEN ELECTRICIANS IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."

(43 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE CIRCUMSTANCES OF THE INSTANT CASE).

(SEE INDEXED ENDORSEMENT PAGE 125 ).

10067-64-R: Sheet Metal Workers' International Association Local Union #30 (Applicant) v. The Board of Education for the City of Toronto (Respondent).

Unit: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT CASE).

(SEE INDEXED ENDORSEMENT PAGE 1268).

10088-64-R: Busy B Discount Foods Limited (Stoneycreek, Ontario) Employees
Association (Applicant) v. Busy B Discount Foods Limited (Respondent) v. Food
Handlers' Local Union 175 of the Amalgamated Meat Cutters and Butcher Workmen
of North America, AFL-C10, CLC (Intervener).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN HAMILTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-school hours and during the school vacation period." (42 EMPLOYEES IN THE UNIT).

On April 1, 1965 the Board endorsed the Record as follows:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DETERMINED IN PARAGRAPH 4 AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

HAVING REGARD TO THE (ABOVE) FINDING OF THE BOARD... IT IS NOT NECESSARY FOR THE BOARD TO MAKE A DETERMINATION EITHER WITH RESPECT TO THE STATUS OF THE APPLICANT OR THE SUFFICIENCY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION.

THE APPLICATION OF THE APPLICANT ACCORDINGLY IS DIS-

THE LIST FILED BY THE RESPONDENT HAVING BEEN CHALLENGED BY THE INTERVENER, MR. F.D. EDWARDS, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AT ITS STORE LOCATED AT 27 QUEENSTON ROAD IN HAMILTON.

The Board directs that the respondent post a Notice to Employees of this application and a copy of this endorsement at its store at 952 Fennell Avenue in the city of Hamilton."

On May 6, 1965 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"Following the original hearing of this application on March 23rd, 1965 the applicant, by an undated letter received by the Board on March 30th, 1965, alleged that Fred Spoelstra for whom the intervener submitted evidence of membership had not made any money payment on his own behalf. He alleged further that Victor Pathe a business agent for the intervener had paid the initiation fee for Spoelstra. The Board, after conducting its own initial investigation into the allegations of the applicant, set the matter down for hearing to inquire into the circumstances surrounding the signing of a member—ship card in the intervener trade union by Fred Spoelstra.

AT THE HEARING OF THE BOARD ON APRIL 28TH, 1965 THERE WAS A DIRECT CONFLICT BETWEEN THE TESTIMONY OF PATHE AND SPOELSTRA. WHILE ADMITTING THAT HE SIGNED THE APPLICATION FOR MEMBERSHIP AND HAD COUNTERSIGNED THE RECEIPT BOTH OF WHICH INDICATE THE PAYMENT OF A \$1.00 INITIATION FEE, SPOELSTRA TESTIFIED THAT, IN FACT, HE DID NOT PAY THE \$1.00 INITIATION FEE AT THE TIME HE SIGNED THE APPLICATION AND RECEIPT OR AT ANY TIME THEREAFTER. PATHE'S TESTIMONY, WHICH IS IN ACCORD WITH THE DOCUMENTARY EVIDENCE FILED ON BEHALF OF SPOELSTRA, IS THAT AT THE TIME THE APPLICATION FOR MEMBERSHIP WAS SIGNED AND THE RECEIPT ISSUED, HE (PATHE) COLLECTED A \$1.00 INITIATION FEE FROM SPOELSTRA. HAVING CAREFULLY CONSIDERED ALL THE EVIDENCE BEFORE US, THE BOARD FINDS THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF SPOELSTRA HAS MET THE REQUIREMENTS OF THE BOARD.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DETERMINED IN PARAGRAPH 4 OF THE BOARD'S ENDORSEMENT OF APRIL 1ST, 1965 WERE MEMBERS OF THE INTERVENER AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

#### A CERTIFICATE WILL ISSUE TO THE INTERVENER."

10098-64-R: United Steelworkers of America (Applicant) v. Butler Manufacturing Company (Canada) Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (78 EMPLOYEES IN THE UNIT).

THE BOARD FOUND THAT 2 NAMED EMPLOYEES EXERCISE MANAGERIAL FUNCTIONS AND ARE EXCLUDED FROM THE BARGAINING UNIT, AND THAT 3 NAMED EMPLOYEES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

10112-64-R: International Association of Bridge, Structural & Ornamental Tronworkers Local 721 (Applicant) v. The Board of Education for the City of Toronto (Respondent).

Unit: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT CASE).

(SEE INDEXED ENDORSEMENT PAGE 128 ).

10118-64-R: Brotherhood of Painters Decorators and Paperhangers of America, Local 557 (Applicant) v. The Board of Education for the City of Toronto (Responden

Unit: "ALL JOURNEYMEN PAINTERS, GLAZIERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (84 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT CASE).

(SEE INDEXED ENDORSEMENT PAGE 128).

10133-64-R: Wood, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT V. JACOBS AND DESMORE LTD. (RESPONDENT).

Unit: "ALL Lathers and Lathers' apprentices in the employ of the respondent within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and those above the rank of non-working foreman."

(42 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE REPORT OF THE EXAMINER IN THIS CASE, DATED 27TH OF APRIL, 1965, DISCLOSES SEVERAL PROBLEMS RESPECTING THE BARGAINING

UNIT. THE FIRST QUESTION POSED IS, WHAT PERSONS ARE LATHERS? IN THE BOARD'S EXPERIENCE, PERSONS INSTALLING INSULATION ARE NOT LATHERS BUT, RATHER, ARE CARPENTERS OR AT LEAST PERFORM WORK GENERALLY FALLING UNDER THE JURISDICTION OF THE CARPENTERS' UNION. ACCORDINGLY, WHERE EMPLOYEES PERFORM BOTH LATHING AND INSULATION WORK, THE RULE SET OUT IN THE O. J. GAFFNEY LIMITED CASE, O.L.R.B. MONTHLY REPORTS, AUGUST 1964, p. 233, NAMELY, "IT HAS BEEN THE PRACTICE OF THE BOARD IN CASES WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS, (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS IN AN APPLICATION FOR CERTIFICATION." IS APPLICABLE."

10136-64-R: Local Union 1590 of the International Brotherhood of Electrical Workers AFL - CIO - CLC (Applicant) v. 1-T-E Circuit Breaker (Canada) Limited Bulldog Electric Products Division (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (207 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT 4 NAMED EMPLOYEES ARE NOT MEMBERS OF THE SALES STAFF AND ARE INCLUDED IN THE BARGAINING UNIT.

10204-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Cross Town Paving Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS. (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 128).

10208-65-R: Canadian Union of Public Employees (Applicant) v. The Board of Commissioners of Police of The City of Brantford (Respondent).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT." (2 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE WRITTEN AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE CHIEF OF POLICE, A NAMED EMPLOYEE IS NOT INCLUDED IN THE BARGAINING UNIT.

10209-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. NATIONAL DRUG AND CHEMICAL COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT 2 NAMED EMPLOYEES ARE INCLUDED IN THE BARGAINING UNIT.

10216-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, Local Union No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. Donlands Dairy Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS DAIRY BAR IN METROPOLIT TORONTO, SAVE AND EXCEPT FORELADY AND PERSONS ABOVE THE RANK OF FORELADY."

(2 EMPLOYEES IN THE UNIT).

10231-65-R: FUR WORKERS' UNION, LOCAL 82, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. CHARLES OGILVY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FUR DEPARTMENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT TRUCK DRIVERS AND MAINTENANCE EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

10232-65-R: Fur Workers' Union, Local 82, Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. M. Caplan Furs (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FUR DEPARTMENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DESIGNERS AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT TRUCK DRIVERS AND MAINTENANCE EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

10241-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Perinini Limited (Respondent) v. Internation of Operating Engineers, Local 793 (Intervener).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, ALL CONSTRUCTION LABOURE ENGAGED IN BUILDING PROJECTS AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION AND A COUNCIL OF TRADE UNIONS DATED JUNE 8, 1964." (7 EMPLOYEES IN THE UNIT)

THE BOARD NOTED THAT THE QUESTION OF THE DESCRIPTION OF THE BARGAINING UNIT IN CASES INVOLVING APPLICATIONS FOR CERTIFICATION BY THE PRESENT APPLICANT AND BY LOCAL 506 OF THE SAME PARENT UNION HAS BEEN CONSIDERED BY THE BOARD IN ITS DECISION IN CROSS TOWN PAVING COMPANY LTD., BOARD FILE # 10204-65-R.

The Board also noted that the respondent and Local 506 of the applicant's parent union are parties to a collective agreement dated the 11th day of July, 1963 which agreement covers labourers engaged in building projects.

10244-65-R: Local #28, International Brotherhood of Bookbinders (Applicant)

v. Northern Miner Press Limited (Respondent).

UNIT: "ALL JOURNEYMEN, JOURNEYWOMEN, BOOKBINDERS AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

10245-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. STALEY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

10253-65-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. ZEHR'S MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS STORES AT GUELPH, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"There was filed in this matter, prior to the terminal date, a document signed by some of the employees of the respondent in the bargaining unit as indicative of opposition by these employees to the application of the applicant. Mr. Kerr, an employee of the respondent, in the bargaining unit, was the only person who testified concerning the origination, preparation and circulation of this document.

THE DOCUMENT WHICH WAS FILED IN THIS MATTER AS INDICATIVE OF OPPOSITION TO THIS APPLICATION READS IN PART AS FOLLOWS:

"We, THE UNDERSIGNED, BEING EMPLOYEES OF ZEHR'S MARKETS LIMITED, DO NOT WISH TO BE REPRESENTED IN RESPECT TO LABOUR RELATIONS WITH ZEHR'S MARKETS LIMITED, BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION OR ANY REPRESENTATIVE THEREOF.

FURTHER, WE DO HEREBY AUTHORIZE ROBERT KERR AS OUR REPRESENTATIVE FOR THE PURPOSE OF OPPOSING CERTIFICATION, AT THE HEARING OF THE APPLICATION FOR CERTIFICATION TO BE HELD BY THE ONTARIO LABOUR RELATIONS BOARD.

As per the attached authorization 1 hereby oppose the Application for certification between the Retail Clerks International Association and Zehr Markets Ltd."

WHEN THE REGISTRAR ACKNOWLEDGED RECEIPT OF THIS DOCUMENT TO MR.
KERR AND ALSO WHEN NOTIFICATION OF THE RECEIPT OF THIS DOCUMENT
WAS SENT TO THE OTHER PARTIES THE REGISTRAR STATED AS FOLLOWS:

" POINT OUT THAT THE "AUTHORIZATION" REFERRED TO IN THE FINAL PARAGRAPH OF THE STATEMENT OF DESIRE WAS NOT RECEIVED BY THE BOARD."

Subsequently, on April 27th, 1965, some 5 days after the terminal date, the Board received a further letter over the signature of Mr. Kerr.

"PLEASE BE ADVISED THAT I, ROBERT KERR'SIGNED A LETTER OPPOSING THE APPLICATION OF R.C.I.A. AS REPRESENTATIVE OF THE PARTIME EMPLOYEES.

My LETTER INCLUDED THE AUTHORIZATION OF THE REMAINING 18 PARTIME EMPLOYEES AND IT WAS SIGNED BY THE SAID 18 EMPLOYEES.

MY LETTER REFERRED TO THE \*\*ATTACHED\*\*
AUTHORIZATION WHILE IT WAS ACTUALLY INCLUDED.\*\*

IT WOULD APPEAR FROM MR. KERR'S EVIDENCE THAT, PRIOR TO THE PREPARATION OF THE FIRST MENTIONED DOCUMENT WHICH WAS FILED IN OPPOSITION TO THIS APPLICATION, HE SPOKE TO MR. BIERSCHBACH, THE RESPONDENT'S GROCERY MANAGER. THE PARTIES AGREED THAT Mr. BIERSCHBACH WAS INCLUDED IN THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING FOR THE FULL TIME STAFF OF THE STORE. WHEN MR. KERR APPROACHED MR. BIERSCHBACH HE REQUESTED INFORMATION FROM HIM CONCERNING A COPY OF A COLLECTIVE AGREEMENT WHICH HAD BEEN DISTRIBUTED BY THE APPLICANT IN THIS CASE. APPARENTLY Mr. BIERSCHBACH DID NOT WISH TO DISCUSS THE COLLECTIVE AGREEMENT WITH MR. KERR, HOWEVER, HE SUGGESTED TO MR. KERR THAT IF MR. KERR WISHED TO OPPOSE THE APPLICANT UNION HE COULD TAKE UP A PETITION. Mr. KERR INDICATED TO Mr. BIERSCHBACH THAT HE DID NOT HAVE ANY KNOWLEDGE AS TO WHAT A PETITION SHOULD CONTAIN. THIS EVENT TOOK PLACE APPROXIMATELY THE SAME DATE THAT THIS APPLICATION WAS MADE. ABOUT ONE WEEK LATER, ON APRIL 21ST, 1965, Mr. BIERSCHBACH BROUGHT TO MR. KERR TWO DOCUMENTS, ONE HANDWRITTEN, THE OTHER TYPEWRITTEN. MR. KERR STATED HE WAS UNABLE TO READ THE HANDWRITTEN DOCUMENT BUT FROM THE TYPEWRITTEN DOCUMENT HE EXTRACTED THE WORDS WHICH APPEAR IN THE BODY OF THE PETITION FILED IN OPPOSITION TO THIS APPLICATION. AFTER THE PETITION IN THIS MATTER WAS ENGROSSED BY MR. KERR. HE CIRCULATED THE PETITION AMONG THE EMPLOYEES OF THE RESPONDENT DURING THEIR WORKING HOURS ON THE PREMISES OF THE RESPONDENT.

APPROXIMATELY ONE WEEK AFTER THE PETITION WAS MAILED TO THE BOARD MR. BIERSCHBACH ATTENDED AT THE HOME OF MR. KERR, WHO HAD BEEN ABSENT FROM WORK FOR SEVERAL DAYS BECAUSE OF ILLNESS, AND PRESENTED MR. KERR WITH THE LETTER DATED APRIL 27TH, 1965, FOR HIS SIGNATURE. WHILE THIS LETTER WAS SIGNED BY MR. KERR, MR. KERR DID NOT KNOW WHO HAD ACTUALLY WRITTEN THE LETTER.

WHILE THE DOCUMENT DATED APRIL 21ST, 1965, WHICH WAS FILED IN OPPOSITION TO THIS APPLICATION WAS PREPARED BY MR. KERR, THE BOARD FINDS FROM ALL THE EVIDENCE THAT IT WAS IN FACT ORIGINATED BY MR. BIERSCHBACH. IT WAS MR. BIERSCHBACH WHO INITIATED THE IDEA OF OPPOSING THIS APPLICATION, WHO INSTRUCTED MR. KERR ON THE METHOD OF OPPOSING THE APPLICATION, WHO SUPPLIED THE WORDS WHICH WERE EMBODIED IN THE PETITION IN OPPOSITION TO THIS APPLICATION AND WHO TOOK IT UPON HIMSELF TO CAUSE MR. KERR TO SIGN THE LETTER DATED APRIL 27TH, 1965, WHICH WAS APPARENTLY INTENDED TO CLARIFY THE DOCUMENT DATED APRIL 21ST, 1965.

WE HAVE EVIDENCE FROM MR. KERR'S PERSONAL KNOWLEDGE AND OBSERVATION CONCERNING THE PREPARATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION AND CONCERNING THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED, HOWEVER, SINCE WE HAVE FOUND THAT THE DOCUMENT WAS ORIGINATED BY MR. BIERSCHBACH AND SINCE MR. BIERSCHBACH WAS NOT CALLED AS A WITNESS TO TESTIFY CONCERNING THE ORIGINATION OF THE DOCUMENT, IN VIEW OF THE ABOVE FINDINGS WE HAVE NO EVIDENCE OTHER THAN HEARSAY CONCERNING THE ORIGINATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION.

HAVING REGARD TO THE REASONS GIVEN BY THE BOARD IN WEYERHAEUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, p. 599, AND CHERNEY BROS. LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1965, p. 525, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

10254-65-R: LAUNDRY DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION LOCAL 351 (APPLICANT) V. CAPITAL COMMERCIAL LAUNDRY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

10257-65-R: General Truck Drivers, Local 879, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Lowes Transport Limited (Respondent).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

10259-65-R: Local Union 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Board of Education for the City of Toronto (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (84 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT CASE).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT TRADE UNION SEEKS CERTIFICATION AS BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS! APPRENTICES, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, IN THE EMPLOY OF THE RESPONDENT IN TORONTO, AND ASKS THE BOARD TO FIND THAT SUCH A UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING. THE CIRCUM-STANCES TO BE CONSIDERED IN THIS APPLICATION ARE, IN ALL MATERIAL RESPECTS, SIMILAR TO THOSE WHICH THE BOARD CONSIDERED IN AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THIS RESPONDENT MADE BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, BOARD FILE NO. 10029-64-R. THE HISTORY OF THE RELATIONSHIP BETWEEN THE RES-PONDENT AND THE GROUP OF EMPLOYEES AFFECTED BY THAT DECISION IS SUBSTANTIALLY THE SAME AS THAT BETWEEN THE RESPONDENT AND THE GROUP OF EMPLOYEES AFFECTED BY THIS APPLICATION. FOR THE REASONS GIVEN IN THE EARLIER BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE THE BOARD FINDS THAT THE GROUP OF EMPLOYEES WITH RESPECT TO WHICH BARGAINING RIGHTS ARE SOUGHT IN THIS APPLICATION CONSTITUTES A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. 11

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

The majority under the provisions of section 6(1) of The Labour Relations Act has determined that all carpenters and carpenters' apprentices in the employ of the respondent in Toronto, save and except foremen and persons above the rank of foreman, is a unit of employees that is appropriate for collective bargaining.

With respect, I cannot agree with this decision.

THE RESPONDENT INFORMED THE BOARD THAT THERE ARE APPROXIMATELY 450 PERSONS EMPLOYED IN ITS MAINTENANCE DEPARTMENT EMBRACING 21 DIFFERENT TRADES ALL OF WHICH ARE ENGAGED IN THE MAINTENANCE AND REPAIR WORK OF THE SCHOOLS AND OTHER BUILDINGS OF THE RESPONDENT IN TORONTO. THE NUMBER EMPLOYED IN EACH OF THE 21 TRADES RANGES FROM 2 TO 84 OR AN AVERAGE OF 21 TRADESMEN.

SEPARATE BARGAINING UNITS FOR EACH TRADE CAN WELL RESULT IN THE COMPLETE ATOMIZATION OF THE PRESENT ALL EMPLOYEE UNIT AND ACT AS A DISTINCT IMPEDIMENT IN THE COLLECTIVE BARGAINING PROCESS. IF A TRADE UNION APPLIED TO THE BOARD TO BE CERTIFIED AS THE BARGAINING AGENT FOR EACH OF THESE 21 TRADES AND THE APPLICATIONS WERE SUCCESSFUL, THERE WOULD BE 21 CERTIFICATES ISSUED TO 21 UNIONS, 21

SEPARATE BARGAINING UNITS AND 21 SETS OF NEGOTIATIONS. IF NEGOTIATIONS WERE UNSUCCESSFUL, THERE COULD FOLLOW THE APPOINTMENT OF 21 CONCILIATION OFFICERS AND 21 CONCILIATION BOARDS, 21 STRIKES AND EVENTUALLY 21 COLLECTIVE AGREEMENTS, WITH 21 DIFFERENT EXPIRY DATES. THIS IS AN UNDUE AND UNWARRANTED BURDEN TO PLACE ON THE RESPONDENT AND COULD WELL BRING TURMOIL RATHER THAN INDUSTRIAL PEACE IN THE MAINTENANCE DEPARTMENT. MOREOVER, MATTERS SUCH AS PENSIONS AND GROUP INSURANCE CANNOT BE BARGAINED FOR SEPARATELY BY FRAGMENTS OF THE OVERALL GROUP OF EMPLOYEES.

FOR THESE REASONS, I FIND THAT THE APPROPRIATE BARGAINING UNIT CONSISTS OF ALL EMPLOYEES IN THE MAINTENANCE DEPARTMENT OF THE RESPONDENT AT TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS BOUND BY SUBSISTING COLLECTIVE AGREEMENTS, PERSONS INCLUDED IN BARGAINING UNITS DEFINED IN CERTIFICATES ISSUED BY THIS BOARD AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. AS LESS THAN 45% OF THE EMPLOYEES IN THIS UNIT ARE MEMBERS OF THE APPLICANT UNION, I WOULD HAVE DISMISSED THE APPLICATION."

10262-65-R: International Hod Carriers' Building & Common Labourers' Union of America, Local 183 (Applicant) v. Armstrong Bros. Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (25 EMPLOYEES IN THE UNIT).

(AFTER HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

THE BOARD NOTED THAT THE PARTIES ARE IN AGREEMENT THAT THE BARGAINING UNIT DOES NOT COVER SHOP OR YARD EMPLOYEES OR EMPLOYEES WORKING IN SAND OR GRAVEL PITS.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE PRACTICE OF THE BOARD IN CONSTRUCTION INDUSTRY CASES OF ASCERTAINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT BY REFERENCE TO EMPLOYEES ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION IS ONE NOT ONLY ENVISAGED BY THE LABOUR RELATIONS ACT BUT ONE THAT HAS EVOLVED OUT OF THE VERY NATURE OF THE INDUSTRY. WHILE IN A PARTICULAR CASE IT MAY APPEAR TO WORK A HARDSHIP ON EITHER THE TRADE UNION OR THE EMPLOYER AS THE CASE MAY BE, THIS IN ITSELF IS NOT SUFFICIENT JUSTIFICATION FOR VARYING THE RULE.

After considering the evidence and the representations of the parties and having regard to the provisions of section 7(1), 92(2) and 96(1) of the Labour Relations act we have concluded that

THE NUMBER OF PERSONS IN THE BARGAINING UNIT FOR THE PURPOSES OF MAKING THE COUNT IN THIS CASE SHOULD BE ASCERTAINED BY REFERENCE TO THE EMPLOYEES IN THE BARGAINING UNIT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION."

10276-65-R: Building Service Employees! International Union Local 204, A.F.L.-C.I.O., C.L.C. (Applicant) v. Preston Springs Gardens Limited (Respondent),

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE
TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL
THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL
SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND
CARDIOLOGICAL TECHNICIANS.

IN VIEW OF THE CIRCUMSTANCES WHICH LED TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION OF SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT AND FOR THE REASONS GIVEN ORALLY AT THE HEARING IN THIS MATTER, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

10286-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT ARNPRIOR, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:C10:CLC AND DOMINION STORES LIMITED." (4 EMPLOYEES IN THE UNIT).

10291-65-R: GENERAL TRUCK DRIVERS LOCAL 879, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. SUPERIOR PROPANE LTD. (STRATFORD) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT SERVICE SUPERVISORS, PERSONS ABOVE THE RANK OF SERVICE SUPERVISOR, OFFICE AND SALES STAFF AND TEMPORARY AND CASUAL EMPLOYEES." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10292-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. WARBRO STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WILLIAMSBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(13 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE TESTIMONY OF GARY MCCOLL, WHO GAVE EVIDENCE IN SUPPORT OF THE DOCUMENT SUBMITTED AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THAT THE DOCUMENT WAS PREPARED BY A FOREMAN AND THAT SOME OF THE SIGNATURES WERE SECURED ON THE DOCUMENT IN HIS PRESENCE, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT REPRESENTS A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT. THE BOARD ACCORDINGLY FINDS THAT THE DOCUMENT DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

10295-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. C.A. Pitts General Contractor Ltd. (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN THE CONSTRUCTION OF BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO ROAD Builders! Association and A Council of Trade Unions made on the 8th day of June, 1964, persons covered by the collective agreement between the respondent AND THE APPLICANT MADE ON THE 13TH DAY OF MAY, 1964, PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN CERTAIN GENERAL CONTRACTORS INCLUDING THE RESPONDENT AND THE APPLICANT MADE ON THE 31ST DAY OF MAY, 1963 AND PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF TORONTO AND VICINITY MADE ON THE 8TH DAY OF OCTOBER, 1954." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE).

10296-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 1758 (Applicant) v. P.R. Connolly Construction Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BROCKVILLE AND THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

10297-65-R: OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 (APPLICANT) v. CANADIAN ASBESTOS COMPANY (RESPONDENT).

Unit: "ALL plasterers and plasterers! apprentices in the Employ of the Respondent in the Counties of Carleton (excepting therefrom Marlborough Township), Russell and Prescott, save and except non-working foremen and Persons above the rank of non-working foreman." (3 employees in the unit).

10301-65-R: FOOTWEAR FASHIONS EMPLOYEES ASSOCIATION (APPLICANT) v. FOOTWEAR FASHIONS LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

10303-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. E. A. Electric Company (Respondent).

Unit: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN (3 EMPLOYEES IN THE UNIT).

10304-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v Dunker Construction Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDE IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The area proposed by the applicant in this case, namely the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, is the standard area established by the Board having regard to collective bargaining patterns. (See <u>Ball Brothers Ltd.</u>, O.L.R.B. Monthly Report, October 1962, p. 236, November 1962, p. 297.) While locals of some unions in the Kitchener area may have collective agreements which impinge on this area, this is not the case with respect to locals of the carpenters\* union. We see no reason, therefore, to depart from our regular area in this case.

THE RESPONDENT HAS FILED A COLLECTIVE AGREEMENT WHICH IT HAS WITH LOCAL 2451 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA. THIS AGREEMENT WAS EFFECTIVE MAY 1ST, 1959

FOR A PERIOD OF ONE YEAR. IT CONTAINS AN AUTOMATIC RENEWAL CLAUSE FROM YEAR TO YEAR. THE AGREEMENT COVERS THE CITY OF STRATFORD IN THE COUNTY OF PERTH. ASSUMING THIS AGREEMENT IS STILL IN FORCE, THIS APPLICATION WAS MADE DURING THE LAST TWO MONTHS OF ITS OPERATION. LOCAL 2451 HAS FILED WITH THE BOARD A SIGNED STATEMENT IN WHICH IT ABANDONS ITS BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT. IN THESE CIRCUMSTANCES, THERE IS NO REASON WHY THE BOARD SHOULD NOT CERTIFY THE APPLICANT."

10306-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUEFFERS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. CHRISTIE BROWN & COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR AND OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

10309-65-R: General Truck Drivers Local 879, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Beaver Cartage (Applicant).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

10313-65-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. T. D. SMITH LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF MOUNT FOREST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(8 EMPLOYEES IN THE UNIT).

10319-65-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Rocomora Bros. Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF."
(20 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT A NAMED EMPLOYEE, ASSISTANT WAREHOUSE SUPERINTENDENT, IS NOT INCLUDED IN THE BARGAINING UNIT.

10322-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. T. C. E. Limited - Electrical Division (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET;

ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(7 EMPLOYEES IN THE UNIT).

10324-65-R: CANADIAN TRANSPORTATION WORKERS! UNION, No. 189, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) v. PHILLIPS TRANSPORT LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT OR WORKING OUT OF DUNNVILLE, SIMCOE AND TORONTO, SAVE AND EXCEPT DESPATCHERS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (64 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10325-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF STRATHROY (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

10327-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Mabco Construction Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

10330-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Springburn Electric (Respondent).

Unit: "All electricians, electricians! apprentices and helpers in the employ of the respondent within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman (3 employees in the unit).

10333-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (AFL-CIO) (CLC) (Applicant) v. Bellite Construction Limited (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTI OF CARLETON (EXCEPTING THEREROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SA AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (20 EMPLOYEES IN THE UNIT). 10334-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Richard and B.A. Ryan (1958) Ltd. (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CAREETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10335-65-R: Wood, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) V. ROMANELLI LATHING (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10337-65-R: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. J. Wagner Electric and Son (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

10339-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. THE TORRINGTON MANUFACTURING COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND LABORATORY STAFF, METHODS TECHNICIANS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

(38 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10341-65-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) v. ETHICON SUTURES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE EMPLOYEES, CLERICAL EMPLOYEES, PROFESSIONAL EMPLOYEES, TECHNICIANS, QUALITY CONTROL EMPLOYEES, LABORATORY EMPLOYEES AND GUARDS." (30 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10344-65-R: Wood, Wire & Metal Lathers! International Union, Local 97 (Applicant) v. A & W. Lathing (Respondent).

UNIT: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10346-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Con-Drain Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10349-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Aqua-Terra Limited Contractors (Respondent) v. International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THAT THE INTERVENTION IN THIS CASE WAS BASED ON A POSSIBLE CONFLICT WITH EXISTING BARGAINING RIGHTS CLAIMED BY THE INTERVENER. THE APPLICANT HAS NOW ADVISED THE BOARD AND THE INTERVENER THAT "THIS IS OUR NORMAL TYPE OF APPLICATION AND WE HAVE NO INTENTION THAT THE WORDS "SIMILAR EQUIPMENT" BE EXTENDED TO INCLUDE EQUIPMENT OPERATED BY HOD CARRIERS LOCAL #183, UNDER THE TERMS OF THE "SEWER & WATERMAIN AGREEMENT" TO WHICH WE ARE BOTH PARTIES — OR UNDER SIMILAR CIRCUMSTANCES WITH INDEPENDENT CONTRACTORS."

10350-65-R: Wood, Wire & Metal Lathers' International Union, Local 97 (Applicant v. Electrocomport Corporation Limited (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY

LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10351-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Price Electric Limited (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10352-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. DeSmit Lumber and Building Supplies Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10356-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 506 (Applicant) v. Artex Concrete Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF RICHVALE AND MAPLE, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10360-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Wellman Concrete Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

The Board noted that it was not called on in this case to deal with any jurisdictional question.

10361-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. D. J. Currie Limited (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

10364-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Kingsway Electric Company Limited (Respondent).

Unit: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN (6 EMPLOYEES IN THE UNIT).

10368-65-R: International Association of Bridge, Structural and Ornamental Iron Workers Local 786 (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "ALL reinforcing rodmen in the employ of the respondent in the Township of Merritt in the District of Sudbury, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

10374-65-R: International Hod Carriers Building and Common Labourers Union of America. Local Union 493 (Applicant) v. Bennett-Pratt Limited (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKIN FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10375-65-R: International Hod Carriers Building and Common Labourers Union, Local #597 (Applicant) v. Bob Therrien Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10380-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SCOTT-JACKSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10389-65-R: United Brotherhood of Carpenters & Joiners of America Local Union #397 (Applicant) v. Mel-Ron Construction (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10419-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Approved Electric (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

10420-65-R: Local Union 353, International Brotherhood of Electrical Workers (APPLICANT) v. Erin Equipment Limited (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(5 EMPLOYEES IN THE UNIT).

10423-65-R: THE OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES & CANADA (APPLICANT) v. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

Unit: "ALL CEMENT MASONS AND CEMENT MASONS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT SAINT MARIE AND THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

#### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

9769-64-R: General Truck Drivers' Union, Local 879, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Day & Campbell Limited (Respondent) v. Christian Trade Unions of Canada (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT, AND OFFICE STAFF." (45 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

Number of names on revised voters List	45.
NUMBER OF BALLOTS CAST	44
NUMBER OF BALLOTS SEGREGATED AND	
NOT COUNTED .	7
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	27
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	10

10224-65-R: United Electrical, Radio and Machine Workers of America (ue)
(Applicant) v. Canadian General Electric Company, Limited Electronic Tube Plant (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS DUFFERIN TUBE PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (547 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS ENGINEERING ASSISTANTS AND LABORATORY ASSISTANTS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT PERSONS CLASSIFIED BY THE RESPONDENT AS FORELADIES ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF FOREMEN.

NUMBER OF NAMES O	N REVISED VOTERS! L	IST	+64
NUMBER OF BALLOTS	CAST	460	
NUMBER OF SPOILED	BALLOTS	1	
NUMBER OF BALLOTS	MARKED IN		
FAVOUR OF APPLICANT		275	
NUMBER OF BALLOTS	MARKED		
AGAINST APPLICAN	Т	184	

#### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9894-64-R: London and District Building Service Workers Union, Local 220, B.S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Waterloo County Health Association (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FREEPORT SANATORIUM IN WATERLOO TOWNSHIP, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (98 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

For the purposes of clarity, the Board declared that the bargaining unit includes registered nursing assistants and excludes student registered nursing assistants.

NUMBER OF NAMES ON REVISED VOTERS! LIST		98
NUMBER OF BALLOTS CAST	98	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT 51		
NUMBER OF BALLOTS MARKED		
AGAINST APPLICANT 47		

(SEE INDEXED ENDORSEMENT PAGE 121 ).

10031-64-R: International Association of Machinists (Applicant) v. Echlin-United of Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."

(29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names on revised voters List	28
NUMBER OF BALLOTS CAST	28
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT 13	

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT IN THIS CASE HAD PREVIOUSLY APPLIED AS BARGAINING AGENT FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT ON JANUARY 18th, 1965.

IT APPEARS THAT DURING THE BOARD S CUSTOMARY CHECK OF THE SIGNATURES ON THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE APPLICANT IN THE FIRST APPLICATION. THE SIGNATURE ON ONE OF THE MEMBERSHIP DOCUMENTS DID NOT CORRESPOND WITH A SPECIMEN SIGNATURE PROVIDED BY THE RESPONDENT. FOLLOWING ITS USUAL PRACTICE THE BOARD CAUSED ONE OF ITS OFFICERS TO INTERVIEW THE PERSON WHOSE NAME APPEARED ON THE MEMBERSHIP DOCUMENT TO DETERMINE WHETHER OR NOT THAT PERSON HAD IN FACT SIGNED THE MEMBERSHIP DOCUMENT. DURING THE COURSE OF THIS INQUIRY. AFTER THE PERSON HAD IDENTIFIED THE SIGNATURE ON THE MEMBERSHIP DOCUMENT AS BEING HER SIGNATURE. SHE ALSO INDICATED TO THE BOARD SOFFICER THAT THE PERSON WHOSE NAME APPEARED ON THE MEMBERSHIP DOCUMENT AS HAVING COLLECTED THE \$1.00 INITIATION FEE WAS NOT THE PERSON WHO IN FACT HAD COLLECTED THE FEE. Mr. DANIEL DEAN, THE GRAND LODGE REPRESENTATIVE OF THE APPLICANT, HAD SIGNED THE MEMBERSHIP DOCUMENT AS COLLECTOR WHEREAS HE HAD NOT IN FACT ACTED AS COLLECTOR.

MR. DEAN WAS THE PERSON WHO HAD SIGNED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS ON BEHALF OF THE APPLICANT IN THE FIRST APPLICATION AND HE INDICATED IN HIS DECLARATION THAT HIS INFORMATION CONCERNING THE COLLECTORS WAS BASED ON INQUIRIES THAT HE HAD MADE. HE WENT ON TO DECLARE THAT ON THE BASIS OF SUCH INQUIRIES THE PERSONS WHOSE NAMES APPEARED ON THE RECEIPTS OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT OF DUES OR INITIATION FEES WERE THE PERSON!S WHO ACTUALLY COLLECTED THE MONIES PAID. MR. DEAN IN NO WAY QUALIFIED THIS STATEMENT IN HIS DECLARATION CONCERNING MEMBERSHIP DOCUMENTS.

When the Board's officer brought to the attention of the Board the allegation by the applicant's member that Mr. Daniel Dean had not in fact collected the \$1.00 paid on account of her initiation fee, the Board on February 4th, 1965, served a formal Notice of Continuation of Hearing to inquire into whether or not that person did in fact pay any money on her own behalf "to the signer of the receipt for the \$1.00 initiation fee payment, namely, Mr. Daniel Dean."

PRIOR TO THAT MATTER COMING ON FOR CONTINUATION OF HEARING THE APPLICANT REQUESTED THE BOARD TO WITHDRAW ITS APPLICATION FOR CERTIFICATION AND THE BOARD ON FEBRUARY 17TH, 1965, ENDORSED THE RECORD OF THE FIRST APPLICATION AS FOLLOWS:

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION AFTER A HEARING OF THE BOARD IN THIS MATTER. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

The applicant, on February 18th, 1965, made the instant application and the membership documents filed in the first application were transferred to this file. Mr. Daniel Dean again completed the Declaration Concerning Membership Documents and stated that his information concerning collectors was based on

#### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9894-64-R: London and District Building Service Workers Union, Local 220, B.S.E.I.J., A.F. of L., C.I.O., C.L.C. (Applicant) v. Waterloo County Health Association (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FREEPORT SANATORIUM IN WATERLOO TOWNSHIP, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (98 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE BARGAINING UNIT INCLUDES REGISTERED NURSING ASSISTANTS AND EXCLUDES STUDENT REGISTERED NURSING ASSISTANTS.

Number of names on REVISED VOTERS!	LIST		98
NUMBER OF BALLOTS CAST		98	
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF APPLICANT	5	51	
NUMBER OF BALLOTS MARKED			
AGAINST APPLICANT	. 4	+7	

(SEE INDEXED ENDORSEMENT PAGE 121 ).

10031-64-R: International Association of Machinists (Applicant) v. Echlin-United of Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."

(29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS LIST	28
NUMBER OF BALLOTS CAST	28
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT	

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT IN THIS CASE HAD PREVIOUSLY APPLIED AS BARGAINING AGENT FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT ON JANUARY 18TH, 1965.

IT APPEARS THAT DURING THE BOARD'S CUSTOMARY CHECK OF THE SIGNATURES ON THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE APPLICANT IN THE FIRST APPLICATION, THE SIGNATURE ON ONE OF THE MEMBERSHIP DOCUMENTS DID NOT CORRESPOND WITH A SPECIMEN SIGNATURE PROVIDED BY THE RESPONDENT. FOLLOWING ITS USUAL PRACTICE THE BOARD CAUSED ONE OF ITS OFFICERS TO INTERVIEW THE PERSON WHOSE NAME APPEARED ON THE MEMBERSHIP DOCUMENT TO DETERMINE WHETHER OR NOT THAT PERSON HAD IN FACT SIGNED THE MEMBERSHIP DOCUMENT. DURING THE COURSE OF THIS INQUIRY, AFTER THE PERSON HAD IDENTIFIED THE SIGNATURE ON THE MEMBERSHIP DOCUMENT AS BEING HER SIGNATURE. SHE ALSO INDICATED TO THE BOARD'S OFFICER THAT THE PERSON WHOSE NAME APPEARED ON THE MEMBERSHIP DOCUMENT AS HAVING COLLECTED THE \$1.00 INITIATION FEE WAS NOT THE PERSON WHO IN FACT HAD COLLECTED THE FEE. Mr. DANIEL DEAN, THE GRAND LODGE REPRESENTATIVE OF THE APPLICANT, HAD SIGNED THE MEMBERSHIP DOCUMENT AS COLLECTOR WHEREAS HE HAD NOT IN FACT ACTED AS COLLECTOR.

MR. DEAN WAS THE PERSON WHO HAD SIGNED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS ON BEHALF OF THE APPLICANT IN THE FIRST APPLICATION AND HE INDICATED IN HIS DECLARATION THAT HIS INFORMATION CONCERNING THE COLLECTORS WAS BASED ON INQUIRIES THAT HE HAD MADE. HE WENT ON TO DECLARE THAT ON THE BASIS OF SUCH INQUIRIES THE PERSONS WHOSE NAMES APPEARED ON THE RECEIPTS OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT OF DUES OR INITIATION FEES WERE THE PERSON'S WHO ACTUALLY COLLECTED THE MONIES PAID. MR. DEAN IN NO WAY QUALIFIED THIS STATEMENT IN HIS DECLARATION CONCERNING MEMBERSHIP DOCUMENTS.

When the Board's officer brought to the attention of the Board the allegation by the applicant's member that Mr. Daniel Dean had not in fact collected the \$1.00 paid on account of her initiation fee, the Board on February 4th, 1965, served a formal Notice of Continuation of Hearing to inquire into whether or not that person did in fact pay any money on her own behalf "to the signer of the receipt for the \$1.00 initiation fee payment, namely, Mr. Daniel Dean."

PRIOR TO THAT MATTER COMING ON FOR CONTINUATION OF HEARING THE APPLICANT REQUESTED THE BOARD TO WITHDRAW ITS APPLICATION FOR CERTIFICATION AND THE BOARD ON FEBRUARY 17TH, 1965, ENDORSED THE RECORD OF THE FIRST APPLICATION AS FOLLOWS:

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION AFTER A HEARING OF THE BOARD IN THIS MATTER. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

THE APPLICANT, ON FEBRUARY 18th, 1965, MADE THE INSTANT APPLICATION AND THE MEMBERSHIP DOCUMENTS FILED IN THE FIRST APPLICATION WERE TRANSFERRED TO THIS FILE. MR. DANIEL DEAN AGAIN COMPLETED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS AND STATED THAT HIS INFORMATION CONCERNING COLLECTORS WAS BASED ON

ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, IN THE EMPLOY OF THE RESPONDENT IN TORONTO, AND ASKS THE BOARD TO FIND THAT SUCH A UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING. THE CIRCUMSTANCES TO BE CONSIDERED IN THIS APPLICATION ARE, IN ALL MATERIAL RESPECTS, SIMILAR TO THOSE WHICH THE BOARD CONSIDERED IN AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THIS RESPONDENT MADE BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, BOARD FILE No. 10029-64-R. THE HISTORY OF THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE GROUP OF EMPLOYEES AFFECTED BY THAT DECISION IS SUBSTANTIALLY THE SAME AS THAT BETWEEN THE RESPONDENT AND THE GROUP OF EMPLOYEES AFFECTED BY THIS APPLICATION. FOR THE REASONS GIVEN IN THE EARLIER BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE THE BOARD FINDS THAT THE GROUP OF EMPLOYEES WITH RESPECT TO WHICH BARGAINING RIGHTS ARE SOUGHT IN THIS APPLICATION CONSTITUTES A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT CASE, THE BOARD FINDS THAT ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR KELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

THE MAJORITY UNDER THE PROVISIONS OF SECTION 6 (1) OF THE LABOUR RELATIONS ACT HAS DETERMINED THAT ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF; THE RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, IS A UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. WITH RESPECT, I CANNOT AGREE WITH THIS DECISION.

THE RESPONDENT INFORMED THE BOARD THAT THERE ARE APPROXIMATELY 450 PERSONS EMPLOYED IN ITS MAINTENANCE DEPARTMENT EMBRACING 21 DIFFERENT TRADES ALL OF WHICH ARE ENGAGED IN THE MAINTENANCE AND REPAIR WORK OF THE SCHOOLS AND OTHER BUILDINGS OF THE RESPONDENT IN TORONTO. THE NUMBER EMPLOYED IN EACH OF THE 21 TRADES RANGES FROM 2 TO 84 OR AN AVERAGE OF 21 TRADESMEN.

SEPARATE BARGAINING UNITS FOR EACH TRADE CAN WELL RESULT IN THE COMPLETE ATOMIZATION OF THE PRESENT ALL EMPLOYEE UNIT AND ACT AS A DISTINCT IMPEDIMENT IN THE COLLECTIVE BARGAINING PROCESS. IF A TRADE UNION APPLIED TO THE BOARD TO BE CERTIFIED AS THE BARGAINING AGENT FOR EACH OF THESE 21 TRADES AND THE APPLICATIONS WERE SUCCESSFUL, THERE WOULD BE 21 CERTIFICATES ISSUED TO 21 UNIONS, 21 SEPARATE BARGAINING UNITS AND 21 SETS OF NEGOTIATIONS. IF NEGOTIATIONS WERE UNSUCCESSFUL, THERE COULD FOLLOW THE APPOINTMENT OF 21 CONCILIATION OFFICERS AND 21 CONCILIATION BOARDS, 21 STR KES AND EVENTUALLY 21 COLLECTIVE AGREEMENTS, WITH 21 DIFFERENT EXPIRY DATES. THIS IS AN UNDUE AND UNWARRANTED BURDEN TO PLACE ON THE RESPONDENT AND COULD WELL BRING TURMOIL RATHER THAN INDUSTRIAL PEACE IN THE MAINTENANCE DEPARTMENT. MOREOVER, MATTERS SUCH AS PENSIONS AND GROUP INSURANCE CANNOT BE BARGAINED FOR SEPARATELY BY FRAGMENTS OF THE OVERALL GROUP OF EMPLOYEES.

FOR THESE REASONS, I FIND THAT THE APPROPRIATE BARGAINING UNIT CONSISTS OF ALL EMPLOYEES IN THE MAINTENANCE DEPARTMENT OF THE RESPONDENT AT TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS BOUND BY SUBSISTING COLLECTAVE AGREEMENTS, PERSONS INCLUDED IN BARGAINING UNITS DEFINED IN CERTIFICATES ISSUED BY THIS BOARD AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. AS LESS THAN 45% OF THE EMPLOYEES IN THIS UNIT ARE MEMBERS OF THE APPLICANT UNION, I WOULD HAVE DISMISSED THE APPLICATION."

10112-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT)

#### - AND -

10118-64-R: Brotherhood of Painters Decorators and Paperhangers of America, Local 557 (Applicant) v. The Board of Education for the City of Toronto (Respondent).

The applicant in each of these cases sought certification as bargaining agent for a unit of employees of the respondent pertaining to its particular craft. The Board's decision in each case was similar to that rendered in application 10067-64-R, reported on page 126 above.

10204-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. CROSS TOWN PAVING COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT IS SEEKING A UNIT CONSISTING OF ALL HEAVY CONSTRUCTION LABOURERS. THE RESPONDENT SEEKS TO RESTRICT THE BARGAINING UNIT TO HEAVY CONSTRUCTION LABOURERS ENGAGED IN THE CONSTRUCTION OF BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS. IN SUPPORT THEREOF, THE RESPONDENT RELIES ON TWO PRIOR DECISIONS OF THE BOARD, ROBERT MCALPINE LTD., BOARD

INQUIRIES WHICH HE HAD MADE. MR. DANIEL DEAN FURTHER STATED IN HIS DECLARATION THAT THE DOCUMENTARY EVIDENCE CONSISTS OF THE FOLLOWING:

"RE-SIGNED 1.A.M. CARDS, SIGNED AND COUNTERSIGNED WHICH WERE SIGNED FOR THE PURPOSE OF EXPRESSING CONTINUED SUPPORT OF THE 1.A.M. AS THEIR BARGAINING AGENT. THE ORIGINAL CARDS PRESENTLY IN POSSESSION OF THE BOARD SHOWS PAYMENT OF ONE DOLLAR IN EACH CASE AND WHICH IN EACH CASE WAS PAID TO MRS. MARJORIE EDKINS, EXCEPTING THE CARD OF MRS. EDKINS HERSELF, THE MONEY BEING PAID TO DANIEL DEAN."

THE RESPONDENT CALLED UPON MR. DEAN AT THE HEARING OF THIS APPLICATION TO EXPLAIN THE REASON FOR THE WITHDRAWAL OF THE FIRST APPLICATION IN LIGHT OF THE NOTICE OF CONTINUATION OF HEARING WHICH WAS SERVED. WHILE MR. DEAN, WITH PROMPTING FROM THE BOARD, ADMITTED THE FACTS AS SET OUT ABOVE AND EVEN ADMITTED THAT WHILE ALL OF THE MEMBERSHIP DOCUMENTS FILED IN THIS FIRST APPLICATION (WHICH HAVE BEEN TRANSFERRED TO THIS APPLICATION) CONTAIN HIS NAME AS COLLECTOR, HE HAD NOT IN FACT ACTED AS THE COLLECTOR NOR HAD HE PERSONALLY RECEIVED THE MONIES FROM THE PERSONS WHO HAD PAID THE INITIATION FEE IN EACH CASE WITH THE EXCEPTION OF THE MEMBERSHIP CARD SIGNED BY MRS. EDKINS.

MR. DEAN CALLED AS A WITNESS MRS. EDKINS WHO TESTIFIED UNDER OATH THAT SHE WAS THE PERSON WHO IN FACT ACTED AS COLLECTOR WITH RESPECT TO ALL THE MEMBERSHIP DOCUMENTS AND THAT SHE DID IN FACT RECEIVE \$1.00 FROM EACH AND EVERY PERSON WHO HAD SIGNED A MEMBERSHIP DOCUMENT. IN ORDER TO INDICATE CONTINUING SUPPORT FOR THE APPLICANT UNION MRS. EDKINS HAD CAUSED TWENTY—THREE PERSONS ON BEHALF OF WHOM MEMBERSHIP DOCUMENTS HAD BEEN SUBMITTED TO RE—SIGN A NEW MEMBERSHIP CARD IN BLANK AND MRS. EDKINS WITNESSED EACH SIGNATURE ON THESE NEW CARDS. THE NEW CARDS HOWEVER, DO NOT INDICATE ANY MONEY PAYMENT. THE ORIGINAL CARDS ARE THE ONLY MEMBERSHIP DOCUMENTS WHICH INDICATE A MONEY PAYMENT.

WE FEEL IMPELLED, HOWEVER, TO POINT OUT THAT WHEN MR. DEAN FIRST ATTEMPTED TO EXPLAIN THE REASON FOR THE ATTEMPTED WITHDRAWAL OF THE FIRST APPLICATION HE WAS ANYTHING BUT FORTHRIGHT WITH THE BOARD. MR. DEAN CASTIGATED THE BOARD'S OFFICER FOR GOING BEYOND THE AUTHORIZATION OF HIS INQUIRY INTO WHETHER THE PERSON HAD IN FACT SIGNED THE APPLICATION CARD WHICH WAS BEING CONSIDERED BY THE BOARD AND MR. DEAN BLAMED THE BOARD'S OFFICER FOR THE DIFFICULTIES IN WHICH HE SUBSEQUENTLY FOUND HIMSELF.

However, the statement received from the applicant's member concerning the collector was volunteered by the member when she indicated that she had no knowledge of the person who had signed her membership card as collector. It is the Board's

OPINION THAT MR. DANIEL DEAN DELIBERATELY INTENDED TO MISLEAD THE BOARD AND WHEN HIS DECEPTION WAS DISCOVERED HE FOUND IT NECESSARY TO ATTEMPT TO WITHDRAW HIS APPLICATION IN ORDER TO RECTIFY THE SITUATION.

IN THE INSTANT APPLICATION MR. DEAN, IN HIS DECLARATION CONCERNING MEMBERSHIP DOCUMENTS HAS ATTEMPTED TO EXPLAIN AND QUALIFY THE STATEMENTS CONTAINED ON THE MEMBERSHIP DOCUMENTS THEMSELVES. IF THE REPRESENTATIONS OF MR. DEAN WERE ALL THE EVIDENCE WE HAD CONCERNING THE MEMBERSHIP DOCUMENTS WE MAY WELL HAVE ARRIVED AT A DIFFERENT RESULT. HOWEVER, IN THIS CASE WE HAVE THE SWORN TESTIMONY OF MRS. EDKINS THAT, WITH THE EXCEPTION OF HER OWN CARD, WHICH WAS IN FACT SIGNED BY MR. DEAN, SHE HAD COLLECTED \$1.00 FROM EACH AND EVERY PERSON WHO SIGNED A MEMBERSHIP DOCUMENT AND THAT SHE HAD TURNED THIS MONEY OVER TO MR. DEAN TOGETHER WITH THE MEMBERSHIP CARDS. WE ARE OF OPINION, HOWEVER, THAT, BECAUSE OF THE CONFUSED STATE OF AFFAIRS WHICH WAS CREATED BY MR. DEAN, THE MEMBERSHIP EVIDENCE SUBMITTED IN THIS CASE IS UNDER A CLOUD AND REQUIRES THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

" | DISSENT.

THERE IS NO DISAGREEMENT BETWEEN MY COLLEAGUES AND MYSELF THAT THE MEMBERSHIP DOCUMENTS IN QUESTION WHICH MR. DANIEL DEAN SUBMITTED TO THE BOARD AS PROOF OF THEIR CONTENTS CONTAINED FLAGRANT MISREPRESENTATIONS OF MATERIAL FACTS WHICH WERE INTENDED BY DEAN. A GRAND LODGE REPRESENTATIVE OF THE APPLICANT, TO BE AND WHICH WERE IN FACT, RELIED UPON AT THEIR FACE VALUE BY THE BOARD IN THE FIRST CASE. NOR INDEED ARE WE DISAGREED THAT HAVING COMMITTED SUCH FRAUD THE BOARD SHOULD IN SOME APPROPRIATE MANNER EXPRESS ITS DISAPPROVAL OF DEAN'S ACTION. THE SOLE DIFFERENCE BETWEEN US THEN IS AS TO WHAT EFFECT SHOULD FLOW FROM THE ACTIONS OF DEAN IN SUCH CIRCUMSTANCES. MY COLLEAGUES WOULD DIRECT A REPRESENTATION VOTE, ALTHOUGH IF FULL EFFECT WERE GIVEN TO THE APPLICANT'S MEMBERSHIP EVIDENCE IT WOULD BE ENTITLED TO OUTRIGHT CERTIFICATION. IN MY OPINION THIS IS A PROPER CASE FOR THE BOARD TO DISMISS THE APPLICATION AND TO EXERCISE THE POWERS CONFERRED UPON IT UNDER SECTION 77 (2) (1) OF THE LABOUR RELATIONS ACT BY IMPOSING A SIX MONTHS BAR.

THE BOARD'S POLICY CONCERNING THE MINIMUM STANDARD OF MEMBERSHIP EVIDENCE WHICH IT WILL ACCEPT AND ITS REASONS FOR DEMANDING THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE AND ACCURACY ON THE PART OF AN APPLICANT HAS BEEN CLEARLY ESTABLISHED IN ITS NUMEROUS DECISIONS OVER THE YEARS. IN THE YALLEY TRANSPORTATION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1963, P. 448, THE BOARD SAID IN PART:-

IT NEED HARDLY BE POINTED OUT, THAT
IT WOULD BE IMPOSSIBLE FOR THE BOARD TO
INTERVIEW EACH AND EVERY EMPLOYEE IN RESPECT

OF WHOM EVIDENCE OF MEMBERSHIP IS FILED IN APPLICATIONS FOR CERTIFICATION. FURTHER. WHETHER A PERSON IS OR IS NOT A MEMBER OF A TRADE UNION OR DOES OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION ARE. EXCEPT IN THE SPECIAL CIRCUMSTANCES WHERE THE BOARD CONSENTS TO THEIR DISCLOSURE. MATTERS WHICH ARE PROTECTED FROM DISCLOSURE BY THE PROVISIONS OF SECTION 83 OF THE ACT. BY THE VERY NATURE OF THINGS, THEREFORE, THE BOARD MUST RELY HEAVILY AND ALMOST ENTIRELY ON DOCUMENTARY EVIDENCE WHEN CONSIDERING THE FACTS RELIED ON AS CONSTITUTING PROOF OF THE UNION S MEMBER-SHIP. AS THE DOCUMENTS SUBMITTED AS EVIDENCE OF MEMBERSHIP ARE NOT SUBJECT TO ANY EXAMINATION BY THE OTHER PARTIES TO THE PROCEEDINGS. THE BOARD MUST BE MOST CIRCUMSPECT AND METICULOUS IN ITS EXAMIN-ATION AND ACCEPTANCE OF THEM. THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBER-SHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CON-TAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, \$16,110, AT P. 12,204,

> ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT.

SEE ALSO THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE CITED ABOVE AND HOLLAND RIVER GARDENS COMPANY LIMITED, BOARD FILE 5588-62-R; DOMINION STORES LIMITED, BOARD FILE 9604-64-R.

IN THE ABOVE CITED CASES THE BOARD MERELY DISMISSED THE APPLICATION. THE INSTANT CASE HOWEVER, IN MY OPINION, DICTATES A DIFFERENT RESULT IN THAT THE APPLICANT WITHDREW HIS APPLICATION IN THE FACE OF A CERTAIN DISMISSAL AND THEN RE-APPLIED THE FOLLOWING DAY, DELETING FROM THE ORIGINAL APPLICATION ONLY THE OBJECTIONAL MEMBERSHIP EVIDENCE AND SUBSTITUTING THEREFOR MEMBERSHIP EVIDENCE WHICH WOULD MEET THE BOARD'S STANDARDS. IN MY VIEW,

AN APPLICANT WHO HAS COMMITTED A FRAUD UPON THE BOARD SHOULD NOT BE PERMITTED TO PURGE HIS FRAUD BY THE SIMPLE EXPEDIENT OF WITHDRAWING HIS FRAUDULENT APPLICATION AND IMMEDIATELY FILING A NEW APPLICATION IN WHICH IT EITHER DELETES OBJECTION-ABLE MEMBERSHIP EVIDENCES OR RECTIFIES DOCUMENTS TO CONFORM TO THE BOARD'S STANDARDS OF MEMBERSHIP EVIDENCE. TO FOLLOW SUCH A PRACTICE IS TO OPENLY INVITE PARTIES TO MISLEAD THE BOARD IN THE REALIZATION THAT IF THEY ARE FOUND OUT THEY WILL SUFFER NO SERIOUS DISABILITY BUT MERELY BE INCONVENIENCED TO THE EXTENT OF THE TIME REQUIRED TO COMPLETE A NEW APPLICATION. UNDER THE CLEAR POLICY OF THE BOARD THE FAILURE OF AN APPLICANT TO FILE FORM 9 WILL RESULT IN A DISMISSAL OF THE APPLICATION. TO PERMIT AN APPLICANT WHO FILES A FORM 9 WHICH IS BASED ON FRAUD TO SUFFER NO GREATER DISABILITY THAN IF HE HAD NOT FILED THE FORM AT ALL, IS IN MY VIEW PATENTLY INEQUITABLE.

IN THESE CIRCUMSTANCES I WOULD EXTEND THE PRINCIPLE ESTABLISHED BY THE BOARD IN THE MATHIAS QUELLETTE CASE, 1955 C.C.H. C.L.L.R, \$16,026, TO CASES SUCH AS THE PRESENT ONE, BY REQUIRING THE APPLICANT WHERE IT WITHDRAWS ITS APPLICATION IN ANTICIPATION OF DISMISSAL, TO SATISFY THE BOARD ON A NEW APPLICATION MADE WITHIN SIX MONTHS OF THE DATE OF ITS WITHDRAWAL THAT SPECIAL CIRCUMSTANCES EXIST WHICH WOULD WARRANT THE BOARD ENTERTAINING THE NEW APPLICATION AT THAT TIME.

There being no special circumstances in the facts of this case, I would dismiss the application and under the clear authority of section 77 (2) (1) of the Labour Relations Act refuse to entertain an application for certification by the applicant in respect of any of the employees in the bargaining unit within a period of six months from the date of such dismissal."

10058-64-R: United Steelworkers of America (Applicant) v. S. A. Armstrong, Limited (Respondent) v. Independent Union of Equipment Workers (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (111 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREED STATEMENT OF FACTS SUBMITTED TO THE EXAMINER).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRODUCTION CONTROL CLERKS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT A NAMED PERSON CLASSIFIED BY THE RESPONDENT AS CHIEF SECURITY GUARD, IS NOT INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT 4 NAMED PERSONS
CLASSIFIED BY THE RESPONDENT AS WATCHMEN, ARE EMPLOYEES OF THE RESPONDENT INCLUDED
IN THE BARGAINING UNIT.

Number of names on revised voters<sup>1</sup> list Number of ballots cast Number of ballots segregated and not counted

106

NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT	78
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF INTERVENER	28

10144-64-R: Wood, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT V. FANELLI LATHING LIMITED (RESPONDENT).

UNIT: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITH A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (41 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST			37
NUMBER OF BALLOTS CAST		37	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF APPLICANT	33		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF WOOD, WIRE & METAL LATHERS!			
INTERNATIONAL UNION, LOCAL 97B	3		

10173-64-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ramsay Industries Limited (Respondent) v. Brotherhood of Painters, Decorators and Paperhangers of America. Glassworkers Section Local 200 Ottawa (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN OR OUT OF OTTAWA AND EASTVIEW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3RD, 1965, ISSUED TO LOCAL 93 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS LIST		8
NUMBER OF BALLOTS CAST		8
NUMBER OF BALLOTS SEGREGATED AND		
NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF INTERVENER	6	

## APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

## No VOTE CONDUCTED

8250-64-R: International Ladies Garment Workers Union (Applicant) v. Gaytown Sportswear (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP IN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT).

ON May 19. 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"On the basis of the evidence contained in the examiner's original and supplementary reports and having regard to the arguments and representations of the parties, the Board finds

- (1) ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP IN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING;
- (2) Lawrence Baine, Douglas B. Bince, John Cooper, Joseph Dorich, Tony Ellul, Paul Mantha, Morris Neger, Wayne Farrar, Nick Petrungaro and Frank Valenta, all shippers, and C. Edelwais, Katerina Kish (noted on the employer's list as K. Kiss), Helena Koklesz (noted on the employer's list as G. Koklecz), and F. Uggello (noted on the employer's list as F. Vggello) are all in the employ of the respondent Gaytown Sportswear and are included in the bargaining unit:
- (3) RODA SURDUCKI, A DESIGNER AND PATTERN MAKER, IS EXCLUDED FROM THE BARGAINING UNIT;
- (4) HARRY GAMBLE AND F. RITACCA ARE BY AGREEMENT OF THE PARTIES INCLUDED IN THE BARGAINING UNIT.

THE BOARD IS NOT SATISFIED THAT AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS DISMISSED."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

" DISSENT.

AM NOT SATISFIED THAT THE SHIPPERS NOT DIRECTLY ASSOCIATED WITH PRODUCTION BE INCLUDED. THERE IS LITTLE OR NO FUNCTIONAL COMMUNITY OF INTEREST OR INTERDEPENDENCE.

Some of the included shippers are physically situated separate and apart and not properly indentifiable with the garment manufacturing unit.

THE HANDLING AND SELLING OF YARD GOODS AND THE SHIPPING AND RECEIVING OF PRODUCTS OF OTHER MANUFACTURERS ON ANOTHER FLOOR OF THE BUILDING ARE FUNCTIONS PRINCIPALLY RELATED TO OTHER CORPORATE DIVISIONS OF THE RESPONDENT<sup>†</sup>S

 $\mbox{\ \ I}$  FIND THE UNRELATED SHIPPERS ARE AS SEPARABLE AS THE EXCLUDED DESIGNER.

(SEE ALSO INDEXED ENDORSEMENT PAGE 118).

9794-64-R: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Drywall By Jamieson (Respondent). (4 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT SUBMITTED IN SUPPORT OF THE APPLICATION FOUR DUES BOOKS AND FOUR CERTIFICATES OF MEMBERSHIP. THE DUES BOOKS AND CERTIFICATES COVER THE SAME PEOPLE SO THAT EVIDENCE OF MEMBERSHIP WAS IN FACT SUBMITTED ON BEHALF OF FOUR PERSONS IN THE BARGAINING UNIT.

THE EVIDENCE ESTABLISHES THAT THE RESPONDENT EMPLOYER PAID UNION DUES FOR TWO OF THE FOUR EMPLOYEES. WHILE WE ARE PREPARED TO ASSUME FOR PRESENT PURPOSES THAT THE APPLICANT WAS ACTING IN GOOD FAITH, WAS UNAWARE THAT THESE MONIES WERE NOT BEING DEDUCTED FROM THE TWO EMPLOYEES! WAGES AND WAS UNAWARE THAT THE EMPLOYER WAS PAYING THE DUES OUT OF HIS OWN POCKET, IT IS CLEAR THAT THE APPLICANT UNDERSTOOD, AT THE VERY LEAST, THAT THE RESPONDENT WAS CHECKING OFF DUES AND REMITTING THEM TO THE UNION. THIS BEING AN APPLICATION FOR CERTIFICATION, IT IS OBVIOUS THAT THE APPLICANT DOES NOT HAVE BARGAINING RIGHTS WITH RESPECT TO EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION AND EQUALLY OBVIOUS THAT IT DOES NOT HAVE A COLLECTIVE AGREEMENT WITH THE RESPONDENT COVERING SUCH EMPLOYEES.

It is clear that the two persons whose dues were paid by the respondent did not pay money on their own behalf and the Board would have to discount such evidence. (See  $\underline{\sf OMER}$  F.  $\underline{\sf CHAPUT}$ , 0.L.R.B. Monthly Report, April, 1963, p. 25).

However the problem here is more serious than the one considered in the Omer F. Chaput case. In our view the circumstances outlined above bring the case squarely within the statutory restrictions of section 10 of the Labour Relations Act. (See Scott Haulage Limited, O.L.R.B. Monthly Report, January, 1963, p. 422). While we are not entirely unsympathetic to the plea of the applicant that, having regard to the practices and peculiar circumstances in the construction industry, exceptions should be made in cases involving unions and employers in that industry, in the light of the clear cut language of section 10, that plea is one that should be made to some other authority.

#### IN THESE CIRCUMSTANCES THE APPLICATION IS DISMISSED."

9806-64-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Nedan Forming Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE THE RANK OF NON-WORKING FOREMAN." (29 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE PROBLEM FACING THE BOARD IN THIS CASE IS TO DETERMINE WHICH OF THE RESPONDENT'S EMPLOYEES FALL INTO THE BARGAINING UNIT. THE RESPONDENT HAS EMPLOYEES WHO IT IS AGREED ARE CARPENTERS AND WHO ARE EXCLUSIVELY ENGAGED IN THE BUILDING OF FORMS. THERE IS, HOWEVER, ANOTHER GROUP OF EMPLOYEES WHO ARE ENGAGED IN BUILDING AND STRIPPING FORMS AND POURING CONCRETE. THIS LATTER GROUP, IN GENERAL, SPEND A GREATER PROPORTION OF THEIR TIME IN BUILDING FORMS THAN IN STRIPPING OR IN POURING CONCRETE AND, OF COURSE, AN EVEN GREATER PROPORTION IN BUILDING AND STRIPPING FORMS THAN IN POURING CONCRETE. WHILE THIS GROUP IS NOT PAID THE CARPENTER®S RATE, THE EMPLOYEES INVOLVED ARE PAID A HIGHER RATE THAN THE ORDINARY LABOURER NOT ENGAGED IN BUILDING FORMS. IN ADDITION, THESE EMPLOYEES HAVE THEIR OWN TOOLS ON THE JOB, NOT A FULL SET OF CARPENTER'S TOOLS BY ANY MEANS, BUT SUFFICIENT FOR THE WORK WHICH THEY DO. THESE INCLUDE SAW, HAMMER, LEVEL, SQUARE AND TAPE.

THESE EMPLOYEES WERE CLASSIFIED BY THE RESPONDENT ON THE LIST OF EMPLOYEES SUBMITTED TO THE BOARD AS CARPENTERS! HELPERS. THE GENERAL SUPERVISOR OF THE RESPONDENT, W. HOSTETTLER, STATED IN EVIDENCE THAT "CARPENTERS! HELPERS" MAY NOT BE THE RIGHT TERM AND PERHAPS THEY SHOULD HAVE BEEN CALLED APPRENTICES. IT DOES NOT APPEAR, HOWEVER, THAT ANY OF THESE MEN ARE APPRENTICES IN THE SENSE IN WHICH THE BOARD USES THAT TERM, NAMELY, INDENTURED APPRENTICES.

The evidence establishes that while the carpenters, or at all events some of them, have greater skills than the "carpenters' helpers", the work on which the "carpenters' helpers" spend the greater proportion of their time is carpentry work — that is, work which the applicant trade union claims as falling within its jurisdiction. While it argues that it organizes only skilled craftsmen, it nevertheless lays claim to the work which is being performed by persons with lesser skills. And see on this point the recent interim order dated April 3rd, 1965, of a Jurisdictional Disputes Commission issued under section 66 of the Labour Relations act in which work in many respects similar to that involved in this case was, on the complaint of the applicant in this case, awarded to the Carpenters' as opposed to the International Labourers' Union. The employer there involved was Laurentian Concrete Forms Ltd.

AFTER MUCH ANXIOUS CONSIDERATION WE HAVE, IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE AND WITHOUT IN ANY WAY ATTEMPTING TO SET A POLICY FOR FUTURE CASES, COME TO THE CONCLUSION THAT THE PRINCIPLE SET OUT IN 0. J. GAFFNEY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST 1964, p. 233, NAMELY "IT HAS BEEN THE PRACTICE OF THE BOARD IN CASES WHERE EMPLOYEES ENGAGE IN THE WORK OF DIFFERENT CRAFTS (AND WHERE THEY ARE PAID ONLY ONE RATE) TO CHARACTERIZE THE CRAFT IN WHICH THEY ARE EMPLOYED FOR A MAJORITY OF THEIR TIME AS THE ONE GOVERNING THEIR STATUS ON AN APPLICATION FOR CERTIFICATION."

9954-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Lightning Fastener Company Limited (Respondent) v. The Shop Committee of the Lightning Fastener Company Limited (Intervener).

Unit: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN ITS OFFICES AT St. CATHARINES AND NIAGARA-ON-THE-LAKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSE, PERSONNEL CLERK AND SECRETARIES TO THE FOLLOWING PERSONS: GENERAL MANAGER, COMPANY LAWYER, CONTROLLER AND WORKS MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION ACCORDINGLY IS DISMISSED."

10049-64-R: International Union of Operating Engineers (Applicant) v. Canadian Canners Limited, Plant No. 1 (Respondent). (67 employees).

(SEE INDEXED ENDORSEMENT PAGE 126 ).

10054-64-R: Sheet Metal Workers' International Association (Applicant) v. Northern Electric Company Limited (Respondent) v. Northern Electric Office Employee (Belleville, Ont.) Association (Intervener) v. Northern Electric Employee Association (Intervener). (519 Employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification wherein the applicant has applied to be certified as bargaining agent for all employees of the respondent at Belleville, save and except foremen, persons above the rank of foreman, office and sales staff and security guards. The employees in the bargaining unit are currently represented by Northern Electric Employees' Association, hereinafter referred to as intervener #2.

INTERVENER #2 CHALLENGED THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT ON THE GROUND OF CONDITIONAL PAYMENT AND ALLEGED THAT MEMBERS OF THE APPLICANT HAD BEEN PROMISED THE RETURN OF THEIR \$1.00 INITIATION FEE IF THE APPLICANT WAS NOT SUCCESSFUL IN THIS APPLICATION.

INTERVENER #2 FURTHER ALLEGED THAT MR. HUNT, ONE OF THE EMPLOYEES FOR WHOM THE APPLICANT HAD SUBMITTED A MEMBER-SHIP CARD, DID NOT PAY ANY MONEY ON HIS OWN BEHALF ON ACCOUNT OF HIS INITIATION FEE.

Intervener #2 called some 12 witnesses in support of its allegations and the applicant called 5 witnesses in rebuttal.

IT APPEARS FROM THE EVIDENCE THAT OTHER UNIONS HAD PREVIOUSLY TRIED TO DISPLACE THE INCUMBENT TRADE UNION. IT WAS ALLEGED THAT ON AT LEAST ONE OCCASION WHEN A PREVIOUS APPLICANT FAILED IN ITS ATTEMPT, THE INITIATION FEES WERE RETURNED TO THE EMPLOYEES.

!T ALSO APPEARS THAT AT APPROXIMATELY THE SAME TIME THE APPLICANT IN THIS MATTER WAS ATTEMPTING TO ORGANIZE THE RESPONDENT'S EMPLOYEES, ANOTHER TRADE UNION WAS ALSO ENGAGED IN AN ORGANIZING COMPAIGN. THIS OTHER TRADE UNION MADE AN APPLICATION FOR CERTIFICATION BUT SUBSEQUENTLY WITHDREW ITS APPLICATION BEFORE THIS MATTER CAME ON FOR HEARING.

THE APPLICANT IN THE INSTANT CASE CARRIED OUT ITS ORGANIZATIONAL CAMPAIGN THROUGH VOLUNTEER ORGANIZERS WHO WERE EMPLOYEES OF THE RESPONDENT. THE THREE MAIN VOLUNTEER ORGANIZERS WERE MR. G. SCULLY, MRS. R. FAIR AND MRS. T. BOOMHOUR.

The applicant filed documentary evidence of membership on behalf of 239 employees whose names appear on the list of employees filed by the respondent, which membership documents represent approximately 46% of the employees in the bargaining unit. Mr. Scully acted as collector with respect to about 100 membership documents and in addition was the witness on the card submitted on behalf of Mr. Hunt.

HAVING REGARD TO ALL THE EVIDENCE AND HAVING HAD AN OPPORTUNITY TO ASSESS THE CREDIBILITY OF THE WITNESSES AS EVIDENCED BY THEIR DEMEANOUR IN THE WITNESS BOX, THE CONSISTENCY OF THEIR TESTIMONY, AND HAVING CONSIDERED WHETHER THE WITNESSES HAD AN APPARENT INTEREST IN THE OUTCOME OF THIS MATTER, THE BOARD FINDS THAT MR. HUNT DID NOT PAY TO MR. SCULLY OR TO ANYONE ELSE ON HIS OWN BEHALF, THE SUM OF \$1.00 OR ANY OTHER AMOUNT ON ACCOUNT OF HIS INITIATION FEE TO THE APPLICANT.

WE FURTHER FIND THAT PROMISES WERE MADE BY THE APPLICANT'S ORGANIZERS TO RETURN THE INITIATION FEES WHICH WERE PAID AND THAT THESE PROMISES OF REPAYMENT WERE NOT ISOLATED INCIDENTS BUT WERE PART OF A GENERAL UNDERSTANDING THROUGHOUT THE RESPONDENT'S PLANT.

IN VIEW OF THESE FINDINGS THE BOARD FURTHER FINDS
THAT ALL OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT
HAS BEEN PLACED IN DOUBT AND ACCORDINGLY THE BOARD IS NOT
PREPARED TO FIND THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE
EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE
TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT
AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR
RELATIONS ACT AND THE BOARD®S RULES OF PROCEDURE.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

10059-64-R: United Shoe Workers of America (Applicant) v. Savage Shoes Limited (RESPONDENT) (120 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOLLOWING THE APPOINTMENT OF AN EXAMINER TO INQUIRE INTO
THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER, THE APPLICANT REQUESTED LEAVE TO WITHDRAW THIS APPLICATION. HAVING REGARD
TO THE STAGE AT WHICH THIS REQUEST WAS MADE, THE BOARD FOLLOWING
ITS USUAL PRACTICE DISMISSES THIS APPLICATION."

10226-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902, OF THE INTERNATIONAL UNION OF MINE MILL AND SMELTER WORKERS (APPLICANT) v. KINGSWAY MOTOR HOTEL (RESPONDENT). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOLLOWING THE HEARING HELD IN THIS MATTER, THE BOARD APPOINTED A. A. MORROW, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD WITH RESPECT TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER.

AT THE MEETING OF THE REPRESENTATIVES OF THE PARTIES CONVENED BY THE EXAMINER ON MAY 11, 1965, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION.

HAVING REGARD TO THE STAGE OF THE PROCEEDINGS AT WHICH THE REQUEST WAS MADE, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION."

10275-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. KITCHENER WATER COMMISSION (RESPONDENT). (27 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT THE RESPONDENT IS A MUNICIPALITY AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT, AND THAT IT HAS DECLARED PURSUANT TO THE PROVISIONS OF SECTION 89 OF THE LABOUR RELATIONS ACT SHALL NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM.

IN VIEW OF THE ACTIONS OF THE RESPONDENT IN MAKING SUCH A DECLARATION, THE BOARD HAS NO JURISDICTION TO PROCESS

THIS APPLICATION FURTHER AND THE APPLICATION IS ACCORDINGLY  $\mathsf{TERMINATED_{\bullet}}^{\mathsf{II}}$ 

10290-65-R: General Truck Drivers Local 879, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Bawtinheimer Contractor (Respondent). (9 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAVING FAILED TO FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 9) IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE, THIS APPLICATION IS DISMISSED."

10305-65-R: International Hod Carriers Building and Common Labourers Union of America (Applicant) v. McNamara Corporation Limited (Respondent) v. International Association of Bridge, Structural and Ornamental Iron Workers (Intervener). (5 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AT THE HEARING, THIS APPLICATION IS DISMISSED."

10340-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. CORPORATION OF THE COUNTY OF LAMBTON (RESPONDENT). (29 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT IN THIS CASE FILED A DOCUMENT CERTIFIED BY THE COUNTY CLERK-TREASURER TO BE A TRUE COPY OF BY-LAW NO. 199 PASSED ON JULY 30TH, 1956 WHEREBY THE CORPORATION OF THE COUNTY OF LAMBTON DECLARED THAT THE LABOUR RELATIONS ACT DOES NOT APPLY WITH RESPECT TO ITS EMPLOYEES OR ANY OF THEM.

HAVING REGARD TO THE PROVISIONS OF THE BY-LAW AND TO THE FACT THAT THE APPLICANT DID NOT APPEAR AT THE HEARING, THIS APPLICATION IS DISMISSED."

10357-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) v. CARL J. LEHMAN & SONS LTD. (RESPONDENT). (9 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT SEEKS CERTIFICATION FOR
"ALL CARPENTERS AND CARPENTER APPRENTICES OF THE RESPONDENT
IN THE COUNTY OF RENFREW, SAVE AND EXCEPT THE TOWNSHIP OF
MCNAB, AND THE FOLLOWING TOWNSHIPS IN THE DISTRICT OF
NIPPISSING, BALLANTYNE, WILKES, PENTLAND, BOYD, CAMERON,
PAXTON, BIGGAR, OSLER, LESTER, DEACON, FITZGERALD, BUTT,
DEVINE, BISHOP, FREDERICK, ANGLIN, WHITE, EDGER, BRONSON,
MCCRANEY, HUNTER, MCLAUGHLIN, BOWER, DICKSON, NIVEN, BARRON,
STRATTON, FINLAYSON, MURCHISON, DICKENS, SABINE, AND LYALL,
PECK, CANISBAY, SPROULE, PRESTON, CLANCY, GUTHRIE, MASTER,
AURY".

THE EMPLOYEES AFFECTED BY THE APPLICATION WERE ALL WORKING IN THE COUNTY OF RENFREW. IF A CERTIFICATE WERE TO ISSUE IT WOULD COVER THE COUNTY OF RENFREW SAVE AND EXCEPT THE TOWNSHIP OF MCNAB.

ON AUGUST 23, 1963 THIS BOARD CERTIFIED THE APPLICANT FOR ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE PRESENT RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF MCNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

THE BARGAINING RIGHTS THERE GRANTED ARE THEREFORE EXACTLY THE SAME AS THOSE WHICH WOULD BE GRANTED IN THIS CASE WERE A CERTIFICATE TO ISSUE.

THE RIGHTS GRANTED IN AUGUST 1963 HAVE NOT BEEN TERMINATED IN ANY PROCEEDING UNDER THE LABOUR RELATIONS ACT.

IN THESE CIRCUMSTANCES THERE APPEARS TO BE NO NEED TO PROCESS THIS APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

10387-65-R: Local Union 1963, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Kinsella Design Associates Ltd. (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THERE WERE NO EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE.

THE APPLICATION IS THEREFORE DISMISSED."

## DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

9920-64-R: CANADIAN TEXTILE COUNCIL (APPLICANT) v. THE WABASSO COTTON COMPANY LIMITED (RESPONDENT) v. UNITED TEXTILE WORKERS OF AMERICA, LOCAL 155 (INTERVENER).

VOTING CONSTITUENCY: "ALL HOURLY-RATED AND PIECE WORK RATED EMPLOYEES OF THE RESPONDENT AT ITS EMPIRE COTTON DIVISION AT WELLAND, SAVE AND EXCEPT PERSONS ACTING IN A SUPERVISORY CAPACITY OR HAVING AUTHORITY TO HIRE, DISCHARGE OR SUSPEND EMPLOYEES; GENERAL FOREMEN, FOREMEN, ASSISTANT FOREMEN, FORELADIES, WATCHMEN, PLANT POLICE, LABORATORY EMPLOYEES, TESTERS, CLASSERS, STORES EMPLOYEES BOILER HOUSE EMPLOYEES, MILL CLERKS, OFFICE EMPLOYEES AND PERSONS EMPLOYED 24 HOURS PER WEEK OR LESS." (635 EMPLOYEES).

NUMBER OF NAMES ON REVISED VOTERS! LIST NUMBER OF BALLOTS CAST NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED

586

582

Number of Ballots spoiled 1

Number of Ballots Marked IN

FAVOUR OF APPLICANT 254

Number of Ballots Marked IN

FAVOUR OF INTERVENER 326

#### DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10111-64-R: United Cement, Lime and Gypsum Workers International Union, AFL-CIO-CLC (Applicant) v. Domtar Construction Materials Limited (Respondent) v. District 50, United Mine Workers of America (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CALEDONIA PLANT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, WATCHMEN, QUALITY CONTROL SUPERVISORS AND EMPLOYEES IN THE RESEARCH DEVELOPMENT UNIT AND THE CENTRAL QUALITY CONTROL UNIT AND STUDENTS HIRED DURING SUMMER VACATION PERIOD." (162 EMPLOYEES IN THE UNIT).

Number of names on revised voters¹ List

Number of Ballots Cast

Number of Ballots Marked in

Favour of applicant

Number of Ballots Marked in

Favour of Intervener

96

## APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

8537-64-R: United Brotherhood of Carpenters and Joiners of America Local Union 1747, Affiliated with The Carpenters! District Council of Toronto and Vicinity (Applicant) v. Baron Dry Wall Limited (Respondent). (24 employees).

10265-65-R: Local Union 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Display Service Co. Ltd. (Respondent). (26 employees).

10323-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. George Ryder Construction Limited (Respondent) (7 EMPLOYEES).

10338-65-R: International Union United Automobile Aerospace and Agricultural Implement Workers of America U.A.W. (Applicant) v. Thompson Products Limited (Respondent) v. Thompson Products Employees Association (Intervener) (933 employees).

10366-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT). (3 EMPLOYEES).

10444-65-R: International Hod Carriers Building and Common Labourers Union, Local # 183 (Applicant) v. Scott-Jackson Construction Ltd. (Respondent). (40 EMPLOYEES).

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

#### DISPOSED OF DURING MAY

9800-64-R: CAMERON MCLENNAN (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. CAPITAL CONCRETE PRODUCTS LIMITED (INTERVENER). (14 EMPLOYEES).

(RE: CAPITAL CONCRETE PRODUCTS LIMITED, IROQUOIS, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application pursuant to section 43 of The Labour Relations Act for a declaration terminating the BARGAINING RIGHTS OF THE RESPONDENT.

The applicant advised the Board by Letter from its solicitors, Messrs. Lamoureux, Rouleau and Forget, dated May 1st, 1965, that ". . . we will not be proceeding . . ." and that "I presume that our application may be rejected for want of prosecution."

THE APPLICATION IS ACCORDINGLY DISMISSED."

9964-64-R: Henry Bell Hopkinson (Applicant) v. Lithographers and Photoengravers International Union, Local 12-L (Respondent) v. Metal Closures Canada Limited (Intervener). (DISMISSED). (26 employees).

(Re: METAL CLOSURES CANADA LIMITED, SCARBOROUGH, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 130 ).

10139-64-R: North Bay Hospital Commission operating the North Bay Civic Hospital (Applicant) v. Canadian Union of Public Employees and its Local #139 (Respondent) (DISMISSED). (75 employees).

(SEE INDEXED ENDORSEMENT PAGE 131 ).

10170-64-R: Murray Ludlow (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141, Warehousemen and Miscellaneous Drivers (Respondent) v. Stark Truck Service (London) Limited (Intervener). (GRANTED). (15 EMPLOYEES).

(RE: STARK TRUCK SERVICE (LONDON) LIMITED, LONDON, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS LIST

NUMBER OF BALLOTS CAST

NUMBER OF BALLOTS MARKED IN

FAVOUR OF RESPONDENT

O

NUMBER OF BALLOTS MARKED

AGAINST RESPONDENT

12

THE BOARD DECLARED THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF STARK TRUCK SERVICE (LONDON) LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

10251-65-R: Holley Electric Ltd. (Applicant) v. International Brotherhood of Electrical Workers, Local Union 353 (Respondent). (DISMISSED). (10 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 136).

10260-65-R: IND-EX DISTRIBUTORS LIMITED (APPLICANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (30 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD."

## APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MAY

10192-64-R: United Packinghouse, Food & Allied Workers (U.P.W.A.) (Applicant) v. The Chun King Corporation of Canada Limited (Respondent) v. International Union, United Automobile Aerospace and Agricultural Implement Workers of America, (U.A.W.) (Predecessor Trade Union).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant by reason of a transfer of Jurisdiction has acquired the rights, privileges and duties of the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (U.A. W.) which was the bargaining agent for a unit of employees of the Chun King Corporation of Canada Limited Defined in a certificate of the Board Dated March 22nd, 1965.

An affirmative declaration under section 47(1) of The Labour Relations act to the effect that the applicant has acquired the rights, privileges and duties of the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (U.A.W.) which was certified by a certificate of the Board dated March 22nd, 1965, will issue."

# APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MAY

10393-65-U: WEAVER COAL COMPANY (APPLICANT) v. A. AVOLIO ET AL (RESPONDENTS).

10394-65-U: EMPIRE-HANNA COAL CORPORATION LTD. (APPLICANT) v. ARTHUR W. BELL ET AL (RESPONDENTS). (WITHDRAWN).

- 10395-65-U: TORONTO FUELS LIMITED (APPLICANT) v. 1. BERG ET AL (RESPONDENTS).
- 10396-65-U: THE VALLEY CAMP COAL CO. OF CANADA LTD. (APPLICANT) v. A. FLETCHER ET AL (RESPONDENTS). (WITHDRAWN).
- 10397-65-U: CANADA COAL CORPORATION LTD. (APPLICANT) V. FLOYD BAKER ET AL (RESPONDENTS). (WITHDRAWN).
- 10411-65-U: The Sheet Metal Contractors Section of the London Builders Exchange (Applicant) v. Sheet Metal Workers International Association, A.F.L. C.I.O. C.L.C., Local Union 473 (Respondent). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

10233-65-U: WILLIAM CRONIN, ROY MCKAY, ALEXANDER IRWIN, AND JOHN McCLOIN, THOMAS ACETI (APPLICANTS) v. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"For the REASONS GIVEN BY THE BOARD IN THE FOUNDATION COMPANY OF CANADA LIMITED AND GEORGE FIRTH CASE, BOARD FILE NO. 10234-65-U. THIS APPLICATION IS DISMISSED."

10234-65-U: Local 508 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada (Applicant) v. The Foundation Company of Canada Limited and George Firth (Respondents). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 139).

10314-65-U: United Steelworkers of America (Applicant) v. Air Shade Aluminum Products Limited (Respondent). (WITHDRAWN).

10315-65-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. L. D. WOOLSEY (RESPONDENT). (WITHDRAWN).

10398-65-U: THE VALLEY CAMP CO. OF CANADA LTD. (APPLICANT) v. J. HURD (RESPONDENT). (WITHDRAWN).

10399-65-U: WEAVER COAL COMPANY (APPLICANT) V. A. AVOLIO ET AL (RESPONDENTS).

10400-65-U: THE VALLEY CAMP COAL CO. OF CANADA LTD. (APPLICANT) v. A. FLETCHER ET AL (RESPONDENTS). (WITHDRAWN).

10401-65-U: CANADA COAL CORPORATION LTD. (APPLICANT) V. FLOYD BAKER ET AL (RESPONDENTS). (WITHDRAWN).

10402-65-U: EMPIRE-HANNA COAL CORPORATION LTD. (APPLICANT) v. ARTHUR W. BELL AND JACK SAMSON (RESPONDENTS). (WITHDRAWN).

10403-65-U: Toronto Fuels Limited (Applicant) v. I. Berg et al (Respondents). (WITHDRAWN).

## COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING MAY

10048-65-U: HOTEL, MOTEL AND RESTAURANT EMPLOYEES' UNION, LOCAL 899, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) v. HOTEL CORNWALLIS CO. LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The complainant alleges that the aggrieved person Douglas Lloyd was dealt with by the respondent contrary to the provisions of section 59a(1) of the Labour Relations Act. More particularly, the complainant alleges that on or about February 9th, 1965 George Barber, the manager of the Hotel Cornwallis, refused to continue the employment of Lloyd because he testified at a hearing on November 10th, 1964 before an Examiner appointed by the Board.

The respondent denies the allegation of the complainant and alleges that Lloyd was dismissed from his employment with the respondent for cause. More particularly, the respondent submits that Lloyd was dismissed because of his conduct in the early morning of November 14th, 1964, when while on duty, he allegedly assaulted both Rene Adelaar, the then assistant manager of the Hotel, and George Barber, who at that time, was a consultant to the Hotel. (Barber was appointed as manager of the Hotel in early December 1964).

LLOYD TESTIFIED THAT HE COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT HOTEL AS A COOK IN 1958. IN MAY OF 1964 HE SIGNED A CONTRACT OF APPRENTICESHIP WITH THE RESPONDENT. IN EARLY SEPTEMBER OF 1964 LLOYD BEGAN A TWENTY WEEK COURSE IN COOKING AT THE PROVINCIAL INSTITUTE OF TRADE IN TORONTO. UPON THE REQUEST OF THE RESPONDENT HE SECURED A LEAVE OF ABSENCE FROM THE INSTITUTE FOR THE FIRST TWO WEEKS IN NOVEMBER IN ORDER TO CARRY OUT THE DUTIES OF CHEF AT THE HOTEL, THE REGULAR CHEF BEING ON VACATION.

LLOYD. BARBER. CONRAD BRISSON (A GENERAL COOK) EUGENE ARCAND (A MAINTENANCE EMPLOYEE) AND LESLIE BURTON (THE PRESIDENT OF THE COMPLAINANT LOCAL 899) ALL GAVE EVIDENCE RELATING TO THE EVENTS THAT TOOK PLACE IN THE EARLY MORNING OF NOVEMBER 14TH, 1964 AT THE HOTEL. WHILE THERE ARE SOME CONFLICTS IN THE TESTIMONY OF THE VARIOUS WITNESSES, THE CONFLICTS RELATE ONLY TO DETAILS. THE EVIDENCE REVEALS THAT A LARGE BANQUET HAD BEEN HELD AT THE HOTEL ON THE EVENING OF NOVEMBER 13TH. WHILE LLOYD, BRISSON AND ARCAND WERE CLEANING UP IN THE KITCHEN FOLLOWING THE BANQUET, LESLIE BURTON CAME INTO THE KITCHEN TO VISIT WITH LLOYD. SHORTLY THEREAFTER ADELAAR APPEARED AND IMMEDIATELY TOOK BURTON BY THE ARM AND PROCEEDED TO ESCORT HIM OUT OF THE KITCHEN. LLOYD VOCALLY PROTESTED ADELAAR! S ACTION AND ATTEMPTED TO BLOCK ADELAAR'S PASSAGE. ADELAAR TRIED TO BRUSH PASS LLOYD. LLOYD THEREUPON SEIZED ADELAAR BY THE SHOULDERS AND PUSHED HIM BACK AGAINST A POST BETWEEN A SET OF DOORS LEADING TO THE KITCHEN. SHORTLY THEREAFTER, BARBER WENT INTO THE KITCHEN. THERE IS SOME CONFLICT BETWEEN THE EVIDENCE OF LLOYD AND BARBER AS TO THE REMARKS THAT WERE EXCHANGED BETWEN THEM. IT APPEARS, HOWEVER, THAT LLOYD

DISPLAYED A BELLIGERENT ATTITUDE AND USING ABUSIVE LANGUAGE CHALLENGED BARBER'S RIGHT TO BE IN THE KITCHEN. LLOYD THERE-UPON GAVE BARBER A SHOVE IN THE DIRECTION OF THE DOOR.

BARBER IMMEDIATELY LEFT THE KITCHEN. LLOYD RETURNED TO WORK DURING THE DAY OF NOVEMBER 14TH. HE RETURNED TO THE INSTITUTE IN TORONTO THE SAME EVENING. THERE WAS NO COMMUNICATION BETWEEN LLOYD AND BARBER OR ADELAAR PRIOR TO LLOYD'S DEPARTURE FOR TORONTO ON THE EVENING OF NOVEMBER 14TH. IN FACT, THERE WAS NO COMMUNICATION OF ANY DESCRIPTION BETWEEN LLOYD AND BARBER PRIOR TO FEBRUARY 9TH, 1965 WHEN LLOYD CAME TO BARBER'S OFFICE. ON THAT OCCASION, BARBER INFORMED HIM THAT HE WAS NOT GOING TO CONTINUE HIS EMPLOYMENT WITH THE HOTEL BECAUSE OF HIS CONDUCT ON NOVEMBER 14TH.

BARBER TESTIFIED THAT HE WAS SATISFIED WITH LLOYD'S QUALIFICATIONS AND COMPETENCE AS A CHEF. HE STATED, HOWEVER, THAT AS A DIRECT RESULT OF LLOYD'S CONDUCT IN THE EARLY MORNING OF NOVEMBER 14TH, HE MADE THE DECISION, A FEW DAYS LATER, NOT TO CONTINUE LLOYD'S EMPLOYMENT. BARBER'S EVIDENCE IS THAT HE DID NOT TELL LLOYD OF HIS DECISION PRIOR TO FEBRUARY 9TH, 1965 BECAUSE LLOYD HAD FAILED TO COMMUNICATE WITH HIM BETWEEN NOVEMBER 14TH AND FEBRUARY 9TH. FURTHER, BARBER SAID THAT HE WAS OF THE OPINION THAT, BY THE TERMS OF THE APPRENTICESHIP AGREEMENT, HE WAS UNDER NO OBLIGATION TO CONVEY HIS DECISION TO LLOYD PRIOR TO THE COMPLETION OF HIS COURSE AT THE INSTITUTE.

THE COMPLAINANT TRADE UNION APPLIED FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ON SEPTEMBER 30TH, 1964. THE DIVISION OF THE BOARD WHICH HEARD THE APPLICATION APPOINTED MR. W. G. JACKSON, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT. MR. JACKSON, IN ACCORDANCE WITH THE TERMS OF HIS APPOINTMENT, MET WITH REPRESENTATIVES OF THE PARTIES IN CORNWALL ON OCTOBER 30TH AND NOVEMBER 10TH, 1964.

AT THE MEETING OF NOVEMBER 10TH, THE COMPLAINANT WAS REPRESENTED BY GASTON RAMAT, AN INTERNATIONAL REPRESENTATIVE OF THE COMPLAINANT, FRANK QUAIFE, A GENERAL REPRESENTATIVE OF THE CANADIAN LABOUR CONGRESS, AND LESLIE BURTON. THE RESPONDENT WAS REPRESENTED BY THOMAS WILSON, WHO IS ASSOCIATED WITH THE SOLICITORS REPRESENTING THE HOTEL, AND GEORGE BARBER. THE EVIDENCE OF BURTON IS THAT WILSON OBJECTED TO LLOYD BEING CALLED AS A WITNESS BEFORE THE EXAMINER. QUAIFE TESTIFIED THAT RAMAT REQUESTED THAT LLOYD BE CALLED AS A WITNESS. SOME OBJECTION WAS RAISED BY WILSON AS TO WHETHER LLOYD SHOULD APPEAR AS A WITNESS SINCE HE WAS ATTENDING SCHOOL IN TORONTO AND, AT THE TIME OF THE MEETING, WAS ONLY TEMPORARILY EMPLOYED TO CARRY OUT THE FUNCTIONS OF THE CHEF. WILSON'S TESTIMONY IS THAT THE RESPONDENT WAS UNDER THE IMPRESSION THAT THE COMPLAIN-ANT HAD AGREED THAT LLOYD, IN HIS CAPACITY AS ASSISTANT CHEF. WAS A MEMBER OF MANAGEMENT AND NOT INCLUDED IN THE BARGAINING UNIT. WILSON STATED THAT IT BECAME APPARENT, HOWEVER, AT THE NOVEMBER 10TH MEETING THAT THIS IMPRESSION WAS NOT CORRECT AND THAT LLOYD WOULD HAVE TO BE EXAMINED WITH RESPECT TO HIS DUTIES

AND RESPONSIBILITIES. WILSON DENIES THAT HE HAD ANY OBJECTION TO LLOYD BEING CALLED AS A WITNESS ON THE BASIS THAT HE EXERCISED MANAGERIAL FUNCTIONS. IT APPEARS THAT WILSON RAISED THE QUESTION AS TO LLOYD SELIGIBILITY TO BE CALLED AS A WITNESS ON THE GROUNDS THAT HE WAS NOT IN THE EMPLOY OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION. MR. JACKSON RULED THAT LLOYD WOULD BE ALLOWED TO GIVE EVIDENCE IN THE PROCEDING BEFORE HIM. WILSON TESTIFIED THAT WHEN LLOYD WAS BEING QUESTIONED BY A REPRESENTATIVE OF THE COMPLAINANT HE (WILSON) OBJECTED TO CERTAIN QUESTIONS BEING ASKED OF LLOYD WITH RESPECT TO FUTURE DUTIES AT THE HOTEL WHICH HE EXPECTED TO FULFIL.

COUNSEL FOR THE COMPLAINANT SUBMITS THAT THE EVIDENCE REVEALS THAT THE RESPONDENT ATTEMPTED TO PREVENT LLOYD FROM GIVING EVIDENCE BEFORE THE EXAMINER. COUNSEL ARGUES THAT THE RESPONDENT DID SO BECAUSE IT BELIEVED THAT LLOYD'S TESTIMONY WOULD BE UNFAVOURABLE TO THE POSITION WHICH IT HAD TAKEN WITH RESPECT TO LLOYD'S EXCLUSION FROM THE BARGAINING UNIT. IT WAS FURTHER ARGUED THAT THE EVIDENCE GIVEN BY LLOYD, IN FACT. WAS UNFAVOURABLE TO THE RESPONDENT, NOT ONLY IN RELATION TO HIS OWN DUTIES BUT ALSO TO THOSE OF GERALD PAQUETTE. (A COPY OF THE REPORT OF W. G. JACKSON. EXAMINER, DATED DECEMBER 2ND, 1964 WAS FILED AS AN EXHIBIT). COUNSEL MADE A REFERENCE TO THE BOARD'S ENDORSEMENT CERTIFYING THE COMPLAINANT UNION IN WHICH THE DIVI-SION OF THE BOARD THAT DEALT WITH THE APPLICATION FOR CERTIFICA-TION FOUND BOTH LLOYD AND PAQUETTE TO BE INCLUDED IN THE BARGAIN-ING UNIT. COUNSEL FOR THE COMPLAINANT SUBMITS THAT UPON THE issuance of the Board's certificate (dated January 18th, 1965) THE RESPONDENT THEREUPON DECIDED NOT TO RE-EMPLOY LLOYD. THIS DECISION IT IS ARGUED WAS MOTIVATED BY THE TESTIMONY GIVEN BY LLOYD BEFORE THE EXAMINER. IT WAS ALSO SUGGESTED BY COUNSEL FOR THE COMPLAINANT THAT THE RESPONDENT HAD HAD PLANS TO PROMOTE LLOYD TO A MANAGEMENT POSITION, BUT THAT HIS APPARENT SYMPATHETIC ATTITUDE TOWARDS THE UNION MADE HIM AN UNSUITABLE CANDIDATE FOR SUCH A POSITION.

Counsel for the respondent submits that in order for the complainant to succeed in its complaint there must be evidence of a substantial nature from which the Board can be satisfied by reasonable inferences or direct evidence that an employee has been discharged contrary to the Labour Relations Act. (Counsel cited the Board's decision in the National Automatic Vending Co. Ltd. Case, Canadian Labour Law Cases Vol. 2, 1960-1964, ¶16,278). Counsel for the respondent argues that the evidence completely fails to substantiate the complainant's allegation that Lloyd was discharged in violation of section 59a(1) of the Labour Relations Act.

THE EVIDENCE REVEALS THAT LLOYD HAD BEEN WORKING ON NOVEMBER 13TH FROM 6.00 A.M. THROUGH TO THE EARLY HOURS OF THE MORNING OF NOVEMBER 14TH WITH ONLY SHORT BREAK PERIODS FOR MEALS.

IN VIEW OF THE LONG HOURS AND STRENUOUS WORK INVOLVED IN SERVICING A LARGE BANQUET, THERE APPEARS TO BE SOME MITIGATING CIRCUMSTANCES TO EXPLAIN LLOYD'S BEHAVIOUR TOWARDS ADELAAR AND BARBER. FURTHER, THERE IS EVIDENCE TO SUGGEST THAT ADELAAR'S DEMEANOUR AND CONDUCT OFFERED SOME PROVOCATION TO LLOYD. WE NOTE ALSO, HOWEVER, THAT LLOYD MADE NO SUBSEQUENT CONCILIATORY GESTURE BY WAY OF MAKING AMENDS TO BARBER. IT, NEVERTHELESS, MAY BE THAT BARBER'S REFUSAL TO RE-HIRE LLOYD BECAUSE OF THE INCIDENTS OF NOVEMBER 14TH WAS UNDULY SEVERE. IT MAY BE ALSO THAT THERE WAS SOME OBLIGATION ON BARBER TO NOTIFY LLOYD OF HIS DECISION NOT TO RE-HIRE HIM PRIOR TO FEBRUARY 9TH, 1965. THE BOARD, HOWEVER, IS NOT CALLED UPON TO PASS JUDGMENT ON THESE MATTERS. OUR ONLY CONCERN WITH THEM IS HOW THEY AFFECT THE DETERMINATION OF THE SOLE ISSUE BEFORE US, NAMELY, WHETHER LLOYD S DISMISSAL WAS THE RESULT OF HIS GIVING EVIDENCE BEFORE THE EXAMINER ON NOVEMBER 10TH, 1964.

THERE IS EVIDENCE THAT LLOYD JOINED THE COMPLAINANT ON THE EVIDENCE BEFORE US, HOWEVER, WE ARE NOT PREPARED UNION. TO DRAW THE INFERENCE THAT THE RESPONDENT KNEW OF HIS UNION MEMBERSHIP. FURTHER, COUNSEL FOR THE COMPLAINANT SPECIFICALLY STATED THAT HE WAS NOT SUGGESTING THAT LLOYD INTENTIONALLY GAVE EVIDENCE BEFORE THE EXAMINER WHICH FAVOURED THE POSITION TAKEN BY THE UNION. IN OTHER WORDS, THERE IS NO SUGGESTION THAT LLOYD'S TESTIMONY RELATING TO HIS OWN DUTIES AND THOSE OF PAQUETTE ARE OTHER THAN FACTUALLY CORRECT. ALSO, HAVING REGARD TO THE EVIDENCE OF THE MEETING ON NOVEMBER 10TH, WE FIND THAT THE RES-PONDENT WAS NOT ENDEAVOURING TO PREVENT LLOYD FROM BEING CALLED AS A WITNESS, BUT RATHER WAS MERELY QUESTIONING HIS STATUS BEFORE THE EXAMINER IN VIEW OF THE FACT THAT HE WAS ATTENDING SCHOOL ON THE DATE OF THE MAKING OF THE APPLICATION FOR CERTIFI-CATION. IT SEEMS FROM THE EVIDENCE THAT THERE WAS A MISUNDER-STANDING OF THE POSITION TAKEN BY THE RESPONDENT ON THE PART OF THE REPRESENTATIVES OF THE COMPLAINANT.

Having regard to all the evidence, the complainant has failed to satisfy the Board that the respondent refused to continue to employ Lloyd on February 9th, 1965 in contravention of section  $59\,\mathrm{a}(1)$  of the Labour Relations Act.

THE COMPLAINT ACCORDINGLY IS DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

" | DISSENT.

I DO NOT ACCEPT THE EVIDENCE OF BARBER THAT HIS DECISION NOT TO RETAIN THE SERVICE OF LLOYD WAS MADE IN MID-NOVEMBER OF 1964 AS A RESULT OF THE INCIDENTS WHICH OCCURRED ON NOVEMBER 14TH. BARBER ADMITS THAT HE ONLY TOLD THE CHEF NURHOFT OF HIS DECISION A WEEK PRIOR TO FEBRUARY 9TH, 1965. IN MY VIEW, IF, IN FACT, BARBER HAD MADE HIS DECISION IN MID-NOVEMBER TO DISMISS LLOYD HE WOULD HAVE SO INFORMED NURHOFT,

WHO HAD A VERY DIRECT INTEREST, AT THAT TIME. IN MY OPINION, BARBER ONLY MADE HIS DECISION AFTER THE BOARD HAD ISSUED ITS CERTIFICATE TO THE COMPLAINANT TRADE UNION ON JANUARY 18th, 1965 AND HAD DETERMINED ON THE BASIS OF THE REPORT OF THE EXAMINER DATED DECEMBER 2ND, 1965 THAT LLOYD WAS INCLUDED IN THE BARGAINING UNIT. I FIND THAT LLOYD WAS DISMISSED BY THE RESPONDENT ON FEBRUARY 9TH, 1965 CONTRARY TO THE PROVISIONS OF SECTION 59A(1) OF THE LABOUR RELATIONS ACT. I WOULD HAVE DIRECTED THAT THE RESPONDENT BE REQUIRED TO COMPENSATE LLOYD FOR ALL LOSS OF WAGES FROM FEBRUARY 9TH, 1965 TO MARCH 29TH, 1965 WHEN LLOYD SECURED OTHER EMPLOYMENT.

10092-64-U: North Bay General Workers Union, Local No. 1603, C.L.C. (Complainant v. Gravell Brick Company Limited, North Bay, Ontario (Respondent).

10203-65-U: Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261, Ottawa, Ontario, affiliated with A.F. of L. C.I.O. and C.L.C. (Complainant) v. The Bruce Macdonald Motor Lodge, Ottawa, Ontario (Respondent).

10236-65-U: SUDBURY MINE, MILL AND SMELTER WORKERS UNION, LOCAL No. 598 (COMPLAINANT) v. WABI IRON WORKS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The complaint in this case was that Florent Pilon was discriminately discharged from his employment contrary to section 50 of The Labour Relations Act. In this respect, it is alleged that Pilon was singled out for discharge because of his union activities.

PILON, WHO WAS THE ONLY WITNESS CALLED TO TESTIFY IN SUPPORT OF THE COMPLAINT, REFERRED TO A CONVERSATION WHICH HE HAD HAD WITH ANOTHER EMPLOYEE WHO HAD GIVEN AN OPINION CONCERNING THE REASON FOR PILON'S DISCHARGE. WHILE THE STATEMENTS OF THIS OTHER EMPLOYEE, IF THEY WERE IMPORTANT TO THE COMPLAINANT'S CASE, WERE MANIFESTLY INADMISSIBLE AS HEARSAY. THIS EMPLOYEE WAS NOT CALLED TO GIVE EVIDENCE CON-CERNING HIS KNOWLEDGE, IF ANY, OF THE REASONS FOR PILON'S DISCHARGE. PILON'S TESTIMONY WAS TO THE EFFECT THAT NO ONE IN MANAGEMENT HAD GIVEN HIM ANY INDICATION WHATEVER THAT THEY WERE AWARE OF ANY UNION ACTIVITIES TAKING PLACE WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT. FURTHER, ACCORDING TO PILON'S TESTIMONY THESE ACTIVITIES AND THE CONVERSATIONS OF EMPLOYEES CONCERNING THE UNION ALL TOOK PLACE IN OFF-DUTY HOURS OUTSIDE COMPANY PREMISES WHERE THEY WERE UNLIKELY TO COME UNDER THE SURVEILLANCE OF MANAGEMENT.

Whatever may be said concerning the justification for his dismissal on other grounds, there is a conspicuous absence of any evidence which would warrant an inference on our part that Pilon's discharge was related to his union activities.

IN THE RESULT, THE COMPLAINT MUST BE DISMISSED."

10249-65-U: ARNO GUTSCHMIDT (COMPLAINANT) v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION AND (OR) COLUMBIA METAL ROLLING MILLS LTD. (RESPONDENT).

10250-65-U: International Jewellery Workers' Union (Complainant) v. Public Optical Company (Respondent).

10287-65-U: Laundry Dry Cleaning and Dye House Workers International Union, Local 351 (Complainant) v. Capital Commercial Laundry Limited (Respondent).

10289-65-U: Local Union 105, of the International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Complainant) v. Berlet Electronics Limited (Respondent).

10312-65-U: United Steelworkers of America (Complainant) v. Air Shade Aluminum Products Limited (Respondent).

10345-65-U: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (COMPLAINANT) v. WARBRO STEEL LIMITED (RESPONDENT).

#### APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE

#### AGREEMENT DISPOSED OF DURING MAY

10293-65-M: FOOD HANDLERS' LOCAL UNION 175, (AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF N.A., AFFILIATED WITH THE A.F.L.-C.I.O.), LOCAL UNION 633, (AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF N.A., AFFILIATED WITH THE A.F.L.-C.I.O.) (APPLICANT) v. BUSY B DISCOUNT FOODS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The parties having jointly applied for an early termination of the collective agreement between them pursuant to section 39(3) of the Labour Relations Act, the Board consents to the early termination by the parties of the collective agreement dated the 9th day of September, 1963.

The termination is to be effective on the 30th day of April 1965."

10405-65-M: CANADIAN METALWORKERS ASSOCIATION (APPLICANT) v. LAKESHORE DIE CASTING LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The parties having jointly applied for an early termination of the collective agreement between them pursuant to section 39 (3) of The Labour Relations Act, the Board consents to the early termination by the parties of the collective agreement dated the 22nd day of April, 1963.

The termination is to be effective as of the 26th day of April, 1965."

#### APPLICATION UNDER SECTION 47A DISPOSED OF DURING MAY

10163-64-M: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. GIBSCO TRANSPORT LTD. (RESPONDENT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (INTERVENER) v. JOHN GRANT HAULAGE LIMITED (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 141 ).

# APPLICATIONS UNDER SECTION 66(6) (REVIEW OF INTERIM ORDER OR DIRECTION OF JURISDICTIONAL DISPUTES COMMISSION) DISPOSED OF DURING MAY

10235-65-M: WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION LOCAL 423 (COMPLAINANT) v. GERARD AND GERARD CO. LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 143).

10248-65-M: United Brotherhood of Carpenters' and Joiners of America, Local Union 1747, Affiliated with the Carpenters' District Council of Toronto and Vicinity (Complainant) v. Donaldson-Barron Co. Ltd. (Respondent). (WITHDRAWN).

## APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING MAY

10179-64-M: Local Union 5855 United Steelworkers of America (Applicant) v. Caland Ore Company Limited (Respondent). (WITHDRAWN).

10217-65-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. AEROCIDE DISPENSERS LIMITED (RESPONDENT). (WITHDRAWN).

# REFERENCE TO BOARD PURSUANT TO SECTION 79 A OF THE ACT DISPOSED OF DURING MAY

10237-65-M: Beverage Dispensers Union, Local 757, Port Arthur and Fort William of the Hotel and Restaurant Employees' and Bartenders' International Association (Trade Union) v. Lakehead Hotelkeepers Association (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference from the Minister to the Board pursuant to section 79a of the Labour Relations Act. The question before the Board for determination is whether the Beverage Dispensers Union, Local 757, Port Arthur and Fort William, of the Hotel and Restaurant Employees' and Bartenders' International Association (Hereinafter Referred to as the "Union") has properly given notice complying with section 40 of the Labour Relations Act to the Lakehead Hotelkeepers Association (Hereinafter Referred to as the "Association").

ARTICLE 21 OF THE COLLECTIVE AGREEMENT BETWEEN THE UNION AND THE ASSOCIATION MADE ON JANUARY 17th, 1963, ENTITLED "TERMINATIO AND RENEWAL" READS IN PART AS FOLLOWS:

THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT FROM THE SECOND DAY OF FEBRUARY, 1962, UNTIL THE FIRST DAY OF FEBRUARY, 1965.

IF EITHER PARTY DESIRES TO TERMINATE THIS AGREEMENT AS OF MIDNIGHT ON THE FIRST DAY OF FEBRUARY, 1965, IT SHALL NOT LESS THAN THIRTY (30) DAYS AND NOT MORE THAN SIXTY (60) DAYS PRIOR TO SUCH DATE GIVEN WRITTEN NOTICE TO THE OTHER OF SUCH NOTICE OF TERMINATION.

IF EITHER PARTY DESIRES TO AMEND OR REVISE THIS AGREEMENT IT SHALL SO GIVE NOTICE NOT LESS THAN THIRTY (30) DAYS AND NOT MORE THAN SIXTY (60) DAYS PRIOR TO THE TERMINATION OF THE AGREEMENT.

IF NEITHER PARTY SHALL GIVE NOTICE TO TERMINATE, AMEND OR REVISE THIS AGREEMENT, IT SHALL CONTINUE IN EFFECT FROM YEAR TO YEAR SUBJECT TO TERMINATION, AMENDMENT OR REVISION ON WRITTEN NOTICE TO THE OTHER GIVEN NOT LESS THAN THIRTY (30) DAYS AND NOT MORE THAN SIXTY (60) DAYS PRIOR TO THE TERMINATION DATE IN ANY SUBSEQUENT YEAR.

The evidence is that the Union by registered letter dated January 11th, 1965 gave notice to the Association of its desire to bargain with a view to amending the collective agreement in existence between them. By letter of the same date the President of the Association, Mr. L.M.M. Baarts, informed the Union that, due to the convention of the Association it could not meet with the union committee until the week commencing on January 25th, 1965. Baarts testified that representatives of the Association and the Union did meet on February 1st. His evidence is that he informed the Union on that occasion that since the Union's notice of its desire to bargain was late, the Association was not prepared to bargain. Baarts testified that no bargaining took place between the parties on February 1st or thereafter.

CLEARLY THE UNION DID NOT GIVE NOTICE TO THE ASSOCIATION OF ITS DESIRE TO AMEND THE COLLECTIVE AGREEMENT WITHIN THE TIME LIMITS PRESCRIBED IN THE COLLECTIVE AGREEMENT. FURTHER, HAVING REGARD TO THE FACT THAT ARTICLE 21 PROVIDES THAT IN THE ABSENCE OF NOTICE TO AMEND THE AGREEMENT IT CONTINUES IN EFFECT FROM YEAR TO YEAR, THE NOTICE OF JANUARY 11th, 1965 IS UNTIMELY UNDER THE PROVISIONS OF SECTION 40(1) OF THE LABOUR RELATIONS ACT (SEE HIELD BROTHERS LIMITED OF KINGSTON CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, ¶16,071; C.L.S. 76-549). FINALLY, IN OUR OPINION, THE EVIDENCE CANNOT SUPPORT A FINDING THAT THERE WAS ANY BARGAINING BETWEEN THE PARTIES. ACCORDINGLY, SECTION 13(2) OF THE LABOUR RELATIONS ACT HAS NO APPLICATION."

BOARD MEMBER D. B. ARCHER DISSENTED AND SAID:-

FOR THE REASONS GIVEN IN MY DISSENT IN THE HEILD BROTHERS LIMITED OF KINGSTON CASE (SUPRA) I FIND THAT THE NOTICE GIVEN BY THE UNION OF ITS DESIRE TO BARGAIN ON JANUARY 11th, 1965 FALLS WITHIN THE PURVIEW OF SECTION 40 (1) OF THE LABOUR RELATIONS ACT AND IS THEREFORE TIMELY. I FURTHER FIND THAT THE LETTER OF THE ASSOCIATION DATED JANUARY 11th, 1965 IN REPLY TO THE UNION'S NOTICE OF ITS DESIRE TO BARGAIN AND THE SUBSEQUENT MEETING ON FEBRUARY 1ST WHICH RESULTED FROM THE EXCHANGE OF LETTERS CONSTITUTED BARGAINING AND THAT ACCORDINGLY SECTION 13 (2) OF THE LABOUR RELATIONS ACT IS APPLICABLE."

10271-65-M: United Brotherhood of Carpenters and Joiners of America, Local 18 (Trade Union) v. Pigott Construction Company Limited (Employer).

(WRITTEN REASONS.)

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10034-64-R: Local Union 120, of the International Brotherhood of Electrical Workers, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Wakefield Lighting Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 143 ).

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(2)

10150-64-M: THE PUBLIC UTILITIES COMMISSION OF THE CITY OF PORT ARTHUR (APPLICAN V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 339 (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN ITS DECISION OF APRIL 8th, 1965, IN THIS MATTER, THE BOARD, IN DISMISSING THE APPLICATION, MADE NO DETERMINATION AS TO THE STATUS OF THE TWO PERSONS CONCERNED BECAUSE, IN THE OPINION OF THE BOARD, THE APPLICATION WAS PREMATURE. THE REASONS GIVEN BY THE APPLICANT, IN ITS REQUEST FOR RECONSIDERATION BY THE BOARD OF ITS DECISION OF APRIL 8th, 1965, RELATE TO THE STATUS OF ONE OF THE PERSONS CONCERNED AND DO NOT ESTABLISH THAT THE APPLICATION IS TIMELY AT THIS STAGE. THE REQUEST FOR RECONSIDERATION MUST THEREFORE BE DENIED."

## INDEXED ENDORSEMENTS - CERTIFICATION

8250-64-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) v. GAYTOWN SPORTSWEAR (RESPONDENT).

IN THIS CASE, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT. DURING THE INQUIRY BEFORE THE EXAMINER, COUNSEL FOR THE RESPONDENT OBJECTED TO A RULING OF THE EXAMINER REGARDING

CERTAIN QUESTIONS WHICH COUNSEL FOR THE APPLICANT ASKED AN EMPLOYEE. THE SUBSTANCE OF THIS OBJECTION IS CONTAINED IN A LETTER FROM COUNSEL FOR THE RESPONDENT DATED MAY 4, 1964, which stated:

". . . COUNSEL FOR THE APPLICANT UNION IN CROSS-EXAMINATION ASKED CERTAIN QUESTIONS OF THE WITNESS IN REGARD TO ANY CONTACT THE WITNESS MIGHT HAVE WITH OTHER EMPLOYEES, THE DETAILS OF HIS JOB FUNCTIONS AND THE DETAILS OF HIS KNOWLEDGE OF TRANSACTIONS BETWEEN THE RESPONDENT COMPANY AND OTHER COMPANIES. HE ALSO ASKED VARIOUS QUESTIONS WITH RESPECT TO THE LOCATION OF SHIPPING ROOMS, STOCK ROOMS AND OTHER MATTERS. COUNSEL FOR THE COMPANY OBJECTED TO THESE QUESTIONS ON THE GROUNDS THAT THEY WERE IRRELEVANT TO THE ISSUE BEFORE THE BOARD, NAMELY WHO WERE THE EMPLOYEES OF THE EMPLOYERS MR. JACKSON RULED THAT THE QUESTIONS WERE PROPER AND WE ARE NOW WRITING TO THE BOARD TO REQUEST A REVIEW OF THIS RULING.

IN OUR SUBMISSION, SUCH QUESTIONS ARE IN THE NATURE OF A FISHING EXPEDITION, PARTICULARLY IN VIEW OF THE FACT THAT ANOTHER APPLICATION BEFORE THE BOARD WAS MADE BY THE UNION WITH RESPECT TO SUMMIT SPORTSWEAR, AN ASSOCIATED COMPANY OF THE RESPONDENT. WE WOULD ALSO SUBMIT THAT IT IS NOT PROPER TO REVIEW MATTERS RELATING TO THE COMMUNITY OF INTEREST BETWEEN EMPLOYEES WHEN THE DESCRIPTION OF THE BARGAINING UNIT INCLUDING THE EXCLUSIONS HAVE ALREADY BEEN AGREED TO. IF THE UNION NOW DESIRES TO CHANGE THE DESCRIPTION OF THE BARGAINING UNIT ON THE BASIS OF EVIDENCE IT IS SEEKING TO ADDUCE THROUGH THE EXAMINER HEARING, WE SUBMIT THIS IS A MISUSE OF THE BOARD'S PRACTICE IN VIEW OF THE UNION'S EXPRESS AGREEMENT TO THE COMPANY'S DESCRIPTION OF THE BARGAINING UNIT AT THE HEARING HEREIN.

IN THE CIRCUMSTANCES, WE WOULD REQUEST THAT THE BOARD DIRECT THE EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE NUMBER OF EMPLOYEES OF THE RESPONDENT THAT FALL WITHIN THE AGREED BARGAINING UNIT AND THAT THE EXAMINER BE SPECIFICALLY DIRECTED THAT QUESTIONS PERTAINING TO THE JOB FUNCTIONS OF EMPLOYEES, SAVE AND EXCEPT FOREMAN, FORELADIES, SALES AND OFFICE STAFF ARE IRRELEVANT AND ARE NOT TO BE ALLOWED."

ON May 19, 1964, THE BOARD RULED:

"At the hearing of the application on April 23rd, the union challenged the accuracy of the respondent's claim that there were 43 persons in the bargaining unit. In this respect the applicant claimed that there were only 31 persons in the unit.

BOTH PARTIES AGREED THAT THE BARGAINING UNIT WAS TO BE DESCRIBED AS FOLLOWS:-

ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP IN THE CITY OF TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES AND OFFICE STAFF.

HAVING REGARD TO THE CHALLENGES MADE BY THE APPLICANT IN THE LETTER FROM ITS SOLICITORS OF MAY 7TH, INCLUDING THE FACT THAT THESE CHALLENGES RAISE ISSUES AS TO WHETHER CERTAIN PERSONS WORK FOR THE RESPONDENT OR SOME OTHER EMPLOYER, AND WHETHER THEIR WORK IS CONFINED TO THE SHOP, WE ARE NOT PERSUADED AT THIS POINT THAT THE QUESTIONS WHICH COUNSEL FOR THE APPLICANT PROPOSES TO ASK, CONCERNING THE DUTIES AND RESPONSIBILITIES OF THE CHALLENGED PERSONS AND THEIR KNOWLEDGE OF THE OPERATION OF THE RESPONDENT SBUSINESS, ARE NOT RELEVANT TO THE INQUIRY BY THE EXAMINER.

IT HAS FOR SOME TIME PAST BEEN THE PRACTICE OF THIS BOARD IN SUCH CASES AS THE PRESENT, TO AUTHORIZE THE EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT AND NOT TO IMPOSE ANY LIMITATIONS ON HIS AUTHORITY IN THAT RESPECT. MOREOVER, THE BOARD HAS NOT REQUIRED THE UNION TO PARTICULARIZE ITS CHALLENGES AT THE HEARING BEFORE IT. THE MAIN REASON FOR THIS PRACTICE IS THAT THE UNION USUALLY DOES NOT HAVE ACCESS TO THE EMPLOYER'S LIST OF EMPLOYEES AND IS, THEREFORE, NOT IN A POSITION TO KNOW OR TO PARTICULARIZE ITS CHALLENGES UNTIL IT IS MADE AWARE OF THE NAMES AND JOB CLASSIFICATIONS OF THE EMPLOYEES ON THE LIST AT THE EXAMINER'S HEARING. DEPENDING UPON THE NATURE OF THE CHALLENGES THEN MADE. MANY DIFFERENT ISSUES OF FACT AND LAW CAN AND DO ARISE. E.G. WHETHER A CERTAIN EMPLOYEE WAS EMPLOYED ON THE DATE OF THE APPLICATION, HIS TERMS OF ABSENCE AND RECALL, WHETHER HE WORKED FOR THE RESPONDENT EMPLOYER OR SOME OTHER EMPLOYER. WHETHER HE WAS A PERSON EXERCISING MANAGERIAL FUNCTIONS, WHETHER HE WORKED IN A PARTICULAR LOCATION AND THEREBY FELL WITHIN THE DESCRIPTION OF THE UNIT, WHETHER HIS DUTIES AND RESPONSIBILITIES WERE SUCH AS TO BRING HIM WITHIN AN EXCLUDED CATEGORY ETC. OFTEN. OF COURSE, NEW ISSUES ALSO ARISE DURING THE COURSE OF THE INQUIRY BEFORE THE EXAMINER FROM THE ANSWERS GIVEN BY THE WITNESSES. IT IS OBVIOUS THAT ANY INQUIRY INTO THE COMPOSITION OF A BARGAIN-ING UNIT RESULTING FROM A CHALLENGE TO THE LIST IS IN MANY RESPECTS ESSENTIALLY OF AN EXPLORATORY NATURE FROM THE POINT OF VIEW OF THE UNION.

WE ARE CONSTRAINED TO AGREE WITH THE RULING OF THE EXAMINER THAT COUNSEL IS ENTITLED TO ASK QUESTIONS CONCERNING THE DUTIES AND RESPONSIBILITIES OF THE CHALLENGED PERSONS AS WELL AS QUESTIONS RELATING TO THEIR KNOWLEDGE OF THE RESPONDENT'S BUSINESS OPERATION PROVIDED THAT THE ANSWERS TO THOSE QUESTIONS CAN BE REASONABLY RELEVANT TO THE QUESTIONS AS TO WHETHER THEY SHOULD BE INCLUDED OR EXCLUDED FROM THE BARGAINING UNIT. IN OUR OPINION THESE QUESTIONS MIGHT WELL BE RELEVANT TO THE ISSUES AS TO WHETHER AN EMPLOYEE WORKS IN THE SHOP OR FOR THE RESPONDENT OR FOR SOME OTHER EMPLOYER, OR WHETHER HE FALLS WITHIN AN EXCLUDED CATEGORY.

OUR DECISION IN THIS CASE IS, OF COURSE, WITHOUT PREJUDICE TO THE RIGHT OF EITHER OF THE PARTIES TO TAKE OBJECTION TO QUESTIONS WHICH ARE ABUSIVE, REPETITIOUS, VEXATIOUS, FRIVOLOUS, OR WHICH ARE PATENTLY IRRELEVANT TO ANY QUESTION BEFORE THE BOARD OR ARE BEING ASKED FOR THE ULTERIOR PURPOSE OF GAINING INFORMATION TO BE USED IN ANOTHER APPLICATION OR FOR ANOTHER PURPOSE."

OBJECTION WAS SUBSEQUENTLY MADE BY COUNSEL FOR THE APPLICANT TO ANOTHER RULING OF THE EXAMINER THAT HE WAS AUTHORIZED TO CALL AS WITNESSES ONLY THOSE PERSONS WHO THE APPLICANT CONTENDED SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. THE SUBSTANCE OF COUNSEL'S OBJECTION IS CONTAINED IN A LETTER DATED MAY 22, 1964, WHICH STATED:

". . . Counsel for the Respondent expressed the DESIRE TO MAKE A STATEMENT TO CLARIFY THE RESPONDENT'S OPERATION. AT THIS TIME MR. M. KIMMEL WHO APPARENTLY MANAGES THE RESPONDENT COMPANY WAS PRESENT AND ANSWERED SOME QUESTIONS PUT TO HIM BY COUNSEL FOR THE APPLICANT WITH REGARD TO THE STATEMENT SUBMITTED. MR. KIMMEL EXPRESSED THE DESIRE TO LEAVE THE MEETING BECAUSE OF OTHER COMMITMENTS AND DID SO LEAVE. WHEN COUNSEL FOR THE APPLICANT INDICATED THAT HE WISHED TO QUESTION MR. KIMMEL FURTHER AT ANOTHER TIME IF NECESSARY, COUNSEL FOR THE RESPONDENT OBJECTED ON THE GROUNDS THAT MR. KIMMEL COULD ONLY BE CALLED AS A WITNESS BY THE RESPONDENT. Counsel for the Applicant requested a ruling by the Examiner on this objection. The Examiner ruled that he WAS AUTHORIZED TO CALL AS WITNESSES ONLY THOSE PERSONS WHO THE APPLICANT HAD DISPUTED AS BEING PART OF THE BARGAINING UNIT AND ACCORDINGLY SUSTAINED THE OBJECTION OF COUNSEL FOR THE RESPONDENT. IT IS THIS RULING WHICH THE APPLICANT HEREWITH REQUESTS BE REVIEWED."

ON JUNE 3, 1964, THE BOARD RULED:

". . . WE ARE OF THE OPINION THAT IF THE STATEMENT MADE BY COUNSEL FOR THE RESPONDENT IS ALLOWED TO STAND AS PART OF THE RECORD OF AND EVIDENCE OBTAINED BY THE EXAMINER, THAT THE PARTIES, INCLUDING THE APPLICANT, OUGHT TO BE AFFORDED THE OPPORTUNITY OF EXAMINING MR. KIMMEL ON ALL MATTERS RELEVANT TO WHAT WAS SAID IN THE STATEMENT. IN CONSEQUENCE, AND FOR THIS PURPOSE MR. KIMMEL SHOULD BE CALLED AS A WITNESS BY THE EXAMINER.

IT IS, OF COURSE, OPEN TO ANY PARTY, AT THE APPROPRIATE TIME, TO CALL AS ITS OWN WITNESS ANY PERSON WHO MAY GIVE RELEVANT AND ADMISSIBLE EVIDENCE. IN THIS RESPECT, PROVIDED HIS PROPOSED EVIDENCE IS RELEVANT AND ADMISSIBLE, MR. KIMMEL WOULD BE A COMPETENT AND COMPELLABLE WITNESS ON BEHALF OF THE APPLICANT."

9894-64-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B.S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Waterloo County Health Association (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Following the Report of the Returning Officer in this matter, dated March 2nd, 1965, a statement of objections and desire to make representations was filed with the Board by the respondent. The objections which have been taken are, first that certain propaganda

ISSUED BY THE APPLICANT IN THE ELECTION CAMPAIGN PRECEDING THE REPRESENTATION VOTE CONTAINED A FALSE STATEMENT, AND SECOND THAT THE APPLICANT VIOLATED THE REGISTRAR'S DIRECTION TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF FRIDAY THE 26TH DAY OF FEBRUARY, 1965, UNTIL THE VOTE WAS TAKEN.

AS TO THE FIRST OBJECTION, THE EVIDENCE ESTABLISHES THAT A MIMEOGRAPHED LETTER OVER THE SIGNATURE OF THE BUSINESS AGENT OF THE APPLICANT AND DATED FEBRUARY 22ND, 1965, WHICH WAS SENT TO EM. LOYEES OF THE RESPONDENT, CONTAINED THE FOLLOWING STATEMENT:

"ON November 17th, 1964 THE Union was certified as bargaining agent for the employees of the Home (the reference is to the Sunnyside Home for the Aged). We have since signed a Collective Agreement which will give the employees the following benefits and conditions: - -"

IN FACT, NO SUCH COLLECTIVE AGREEMENT HAD BEEN SIGNED AT THE TIME THIS LETTER WAS SENT OUT. IT APPEARS THAT, AT THE TIME THE LETTER WAS BEING PREPARED, THE BUSINESS AGENT WAS ADVISED THAT AN AGREEMENT HAD BEEN REACHED BETWEEN THE APPLICANT AND THE SUNNYSIDE HOME FOR THE AGED, AND HE BELIEVED THAT THE AGREEMENT WOULD BE SIGNED WITHIN A DAY OR TWO OF THE TIME THE LETTER WAS PREPARED. IN FACT, THE AGREEMENT WAS NOT SIGNED UNTIL MARCH 2ND, 1965, ALTHOUGH ITS PROVISIONS HAD BEEN AGREED UPON AT THE TIME THE LETTER WAS PREPARED.

Similar objections have been raised in other cases before this Board. Thus, in the <u>International Nickel Company of Canada Case</u>, (1962) C.C.H. Canadian Labour Law Reporter, ¶16,248, the Board stated,

"There is a large measure of what might be called electioneering in any organizational campaign. But to paraphrase the language of the Stauffer-Dobbie Case, (1959), C.C.H. Canadian Labour Law Reporter, Transfer Binder '55-'59, ¶16,147, C.L.S. 76-658, the Board is concerned with the truth or ealsity of campaign literature and speeches only to the extent that the ability of the employees to evaluate such literature or speeches may be impaired, e.g., by the use of campaign trickery, to such an extent that the free desires of the employees cannot be determined."

IN THE INSTANT CASE THE BOARD CANNOT CONCLUDE THAT THE MIS-STATEMENT ABOVE DESCRIBED AMOUNTED TO "CAMPAIGN TRICKERY". THE SUBSTANCE OF THE LETTER IN QUESTION WAS CORRECT, AND THE BOARD FINDS THE OBJECTION WITH RESPECT TO IT IS NOT WELL TAKEN.

AS TO THE SECOND OBJECTION, THE EVIDENCE IS THAT CERTAIN CAMPAIGN PROPAGANDA SENT THROUGH THE MAIL BY THE APPLICANT WAS RECEIVED BY EMPLOYEES OF THE RESPONDENT DURING THE SILENT PERIOD

FOLLOWING MIDNIGHT OF FRIDAY, FEBRUARY 26TH, 1965. THE PRINCIPLE WHICH THE BOARD HAS APPLIED IN CIRCUMSTANCES SUCH AS THIS HAS BEEN SET OUT IN THE AUTOMATIC ELECTRIC CASE. (1961) C.C.H. CANADIAN LABOUR LAW REPORTER, \$16,226, WHERE IT WAS STATED THAT THERE WAS NO ABSOLUTE PROHIBITION, THE INFRINGEMENT OF WHICH WITTINGLY OR UNWITTINGLY WOULD VITIATE A REPRESENTATION VOTE, BUT RATHER THAT THERE IS A HEAVY ONUS ON THE PARTIES TO SEE THAT THE PROHIBITION IS NOT INFRINGED. IN THE INSTANT CASE THE PROPAGANDA IN QUESTION WAS MAILED BY THE APPLICANT AS FIRST CLASS MAIL AT THE MAIN POST OFFICE IN LONDON AT APPROXIMATELY 4:15 P.M. ON THURSDAY. FEBRUARY 25TH. 1965. THE APPLICANT'S BUSINESS AGENT HAD PREVIOUSLY MADE INQUIRIES AT THE POST OFFICE IN LONDON AND HAD BEEN ADVISED THAT MAIL POSTED AT THE MAIN POST OFFICE AT SUCH A TIME WOULD, IN THE NORMAL COURSE OF POST, BE DELIVERED ON THE FOLLOWING MORNING. THE EVIDENCE OF FRANK G. McDonald, Post Master at Kitchener, was that such mail would NORMALLY BE DELIVERED TO THE RESPONDENT'S PREMISES THE MORNING FOLLOWING ITS POSTING. THE POST OFFICE NORMALLY TRANSPORTS MAIL FROM LONDON TO KITCHENER BY TRUCK AT NIGHT. ON THE 25TH OF FEBRUARY. 1965, HOWEVER, THERE WAS A SEVERE SNOW-STORM, WHICH DISRUPTED MAIL SERVICES IN PARTS OF SOUTHERN ONTARIO AND AS A RESULT OF THE STORM THE APPLICANT'S PROPAGANDA IN MANY CASES WAS NOT DELIVERED UNTIL SATURDAY, FEBRUARY 27th, THAT IS, WITHIN THE PROHIBITED PERIOD.

ALTHOUGH THE APPLICANT'S BUSINESS AGENT, RESPONSIBLE FOR THE MAILING, WAS AWARE THAT THERE WAS A STORM AT THE TIME HE MAILED THE LETTERS HE WAS NOT AWARE THAT ANY DISRUPTION OF NORMAL MAIL DELIVERY WOULD OCCUR. NO NOTICE TO SUCH EFFECT HAD BEEN ISSUED BY THE POST OFFICE AT LONDON. THE BOARD FINDS ON THE BASIS OF THE EVIDENCE BEFORE IT THAT THE APPLICANT REASONABLY EXPECTED THAT MAIL WOULD BE DELIVERED IN THE NORMAL COURSE. IN OUR OPINION, THE APPLICANT HAS SATISFIED THE ONUS ON IT TO SEE THAT THE PROHIBITION WAS NOT INFRINGED.

WHILE THIS IS SUFFICIENT TO DISPOSE OF THE OBJECTIONS MADE TO THE REPRESENTATION VOTE, IT MAY BE NOTED THAT MRS. TUCKER, ONE OF THOSE WHO OBJECTED TO THIS APPLICATION, REFRAINED FROM MAILING CERTAIN PROPAGANDA WHICH SHE HAD PREPARED, BECAUSE OF HER BELIEF THAT THE MAIL WOULD BE DELAYED BY THE STORM. IT IS NOT APPROPRIATE TO SPECULATE ON WHAT OUR VIEW MIGHT HAVE BEEN IF MRS. TUCKER IN FACT HAD MAILED HER PROPAGANDA, BUT IT MAY BE NOTED THAT HER DECISION WAS TAKEN WHEN HER MAIL WAS PREPARED AT 7:00 P.M. ON FEBRUARY 25TH IN KITCHENER. AND THAT SHE WAS AWARE THAT WARNINGS HAD BEEN ISSUED WITH RESPECT TO TRAVEL AND COMMUNICATIONS GENERALLY AND IN PARTICULAR THAT MAIL WOULD NOT BE PICKED UP FROM MAIL BOXES. IN ANY EVENT, MRS. TUCKER DID NOT SEND OUT THE PROPAGANDA WHICH SHE HAD PREPARED. THE APPLICANT'S PROPAGANDA, THEREFORE, COULD NOT BE ANSWERED BY ANY PROPAGANDA ON BEHALF OF THE OBJECTORS OR THE RESPONDENT. IT IS QUITE CLEAR, HOWEVER, THAT THIS IS NOT A SUFFICIENT GROUND OF OBJECTION TO A REPRESENTATION VOTE. IT MAY BE THAT THE PARTY WHICH DELIVERS ITS PROPAGANDA LAST HAS AN ADVANTAGE BUT THE QUESTION BEFORE THE BOARD IS ONLY WHETHER THAT ADVANTAGE WAS UNFAIRLY OBTAINED. IN THE INSTANT CASE THE BOARD HAS FOUND THAT THE APPLICANT'S CONDUCT WITH RESPECT

TO THE DELIVERY OF ITS PROPAGANDA WAS NOT SUBJECT TO ANY VALID OBJECTION."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" DISSENT.

IN MY OPINION THE REPRESENTATIVE OF THE APPLICANT TRADE UNION DID NOT MAKE SUFFICIENT ENQUIRIES TO DISCHARGE THE HEAVY ONUS WHICH IS PON HIM TO ASCERTAIN WITH REASONABLE CERTAINTY THAT THE LETTERS HE MAILED AS FIRST CLASS MAIL AT THE MAIN POST OFFICE AT LONDON ON THURSDAY, FEBRUARY 25TH AT APPROXIMATELY 4:15 p.m. Would be delivered to the destinations to which they WERE ADDRESSED IN THE KITCHENER AREA PRIOR TO THE COMMENCEMENT OF THE QUIET PERIOD AT MIDNIGHT ON FRIDAY. FEBRUARY 25TH. 1965. HE TESTIFIED AT THE HEARING THAT THE POST OFFICE AT LONDON INFORMED HIM THAT IN THE NORMAL COURSE OF POST THE LETTERS WOULD BE DELIVERED IN KITCHENER THE FOLLOWING DAY. BUT NORMAL CIRCUM-STANCES DID NOT EXIST AT THE TIME AND THE UNION REPRESENTATIVE MUST HAVE BEEN FULLY AWARE OF THIS FACT. ONE OF THE WORST BLIZZARDS AND SNOW STORMS IN YEARS WAS RAGING THROUGHOUT SOUTHWESTERN ONTARIO AT THE TIME THE LETTERS WERE POSTED. UNDER SUCH CIRCUMSTANCES, ! THINK THAT IT WAS INCUMBENT UPON HIM TO HAVE TELEPHONED THE POSTMASTER AT KITCHENER AND ASCERTAINED FROM HIM WHETHER OR NOT THE LETTERS WOULD BE DELIVERED ON THE FOLLOWING DAY. HAD HE DONE SO. HE WOULD HAVE BEEN DEFINITELY TOLD THAT THEY WOULD NOT BE DELIVERED ON FRIDAY. THE POSTMASTER AT KITCHENER TESTIFIED AT THE HEARING THAT THE PUBLIC WERE ADVISED BY RADIO AND TELEVISION AT VARIOUS INTERVALS ON THURSDAY THERE WOULD BE NO COLLECTION FROM THE STREET BOXES NOR WOULD ANY MAIL BE DELIVERED THE FOLLOWING DAY.

ON THE OTHER HAND, THE REPRESENTATIVE OF THE GROUP OF EMPLOYEES, MRS. TUCKER, TESTIFIED AT THE HEARING THAT AFTER CONSULTING WITH THE POST OFFICE AND HER LEGAL COUNSEL AT APPROXIMATELY 7:00 p.m. on Thursday night decided that she could not take the chance of mailing the letters she had prepared and which were ready for mailing because such letters definitely would not be delivered prior to the commencement of the QUIET PERIOD AT 12:00 p.m. on FRIDAY.

IT WOULD APPEAR THAT BOTH MAILINGS COULD HAVE BEEN MADE WITH REASONABLE CERTAINTY THAT THE LETTERS WOULD HAVE BEEN DELIVERED TO THEIR RESPECTIVE DESTINATIONS ON THE FOLLOWING DAY HAD IT NOT BEEN FOR THE UNUSUALLY HEAVY SNOW STORM. IN MY OPINION, THE REPRESENTATIVE OF THE APPLICANT UNION DID NOT EXERCISE REASONABLE DILIGENCE IN MAKING HIS ENQUIRIES AS TO THE DELIVERY OF MAIL IN KITCHENER THE FOLLOWING DAY AND THAT HIS VIOLATION OF THE DIRECTION OF THE REGISTRAR THAT NO PROPAGANDA SHOULD BE ISSUED AFTER 12:00 p.m. ON FRIDAY, FEBRUARY 26TH SHOULD NOT BE EXCUSED. IN ADDITION, IT IS MOST UNFAIR THAT ONE PARTY SHOULD BE EXCUSED FOR VIOLATING THE DIRECTION OF THE REGISTRAR AND ANOTHER PARTY TO THE SAME PROCEEDING PREVENTED FROM MAILING OUT ITS PROPAGANDA FOR FEAR OF VIOLATING THE REGISTRAR'S DIRECTION BECAUSE OF THE

SAME SNOW STORM. FOR THESE REASONS, I WOULD HAVE DIRECTED A NEW VOTE.  $^{\prime\prime}$ 

10029-64-R: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. The Board of Education for the City of Toronto (Respondent) v. Toronto Board of Education Caretakers' Union, Local 134, Canadian Union of Public Employees (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification. The applicant trade union seeks certification as bargaining agent for all electricians in the employ of the respondent in Metropolitan Toronto and asks the Board to find that such a unit is appropriate. The question of determination of an appropriate bargaining unit arises under section 6 of The Labour Relations Act. Under section 6 (1) the Board makes the determination in the light of the circumstances of each case and its own policies. Under section 6 (2), where an applicant can bring itself within the provisions of the section then (except where the group of employees concerned is included in a bargaining unit represented by another bargaining agent), the Board is required to find a craft unit to be appropriate for collectiave bargaining.

AT THE HEARING IN THIS MATTER, EVIDENCE WAS PRESENTED ON BEHALF OF THE APPLICANT TO SHOW THAT THE APPLICATION CAME WITHIN THE PROVISIONS OF SECTION 6 (2). TO BRING ITSELF WITHIN THESE PROVISIONS AN APPLICANT MUST SHOW (1) THAT THE PERSONS FOR WHOM CERTIFICATION IS SOUGHT EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES: (2) THAT THESE EMPLOYEES "COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES" AND (3) THAT SUCH BARGAINING IS DONE THROUGH "A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT". ON THE EVIDENCE IN THE INSTANT CASE THE APPLICANT HAS SATISFIED (1) AND (3), BUT THE QUESTION WHETHER THE EMPLOYEES CONCERNED COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES IS NOT FREE FROM DOUBT. THE GROUP OF EMPLOYEES IN QUESTION HAS BEEN TREATED AS A DISTINCT GROUP BY THE EMPLOYER. BUT THERE IS NO HISTORY OR PATTERN OF CRAFT BARGAINING BETWEEN SIMILAR EMPLOYERS AND THEIR EMPLOYEES. THE CASES ON THIS POINT HAVE RECENTLY BEEN DISCUSSED BY THE BOARD. SEE THE DUPONT OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 539. THE DECISION IN THAT CASE, OF COURSE, IS NOT DISPOSITIVE OF THE QUESTION IN THE INSTANT CASE SINCE THE BOARD IN THE DUPONT CASE WAS CONCERNED WITH THE HISTORY OF BARGAINING IN COMMERCIAL. INDUSTRIAL OR MANUFACTURING FIRMS, AND SINCE, IN ANY EVENT, THE FACTS IN THE INSTANT CASE ARE DIFFERENT FROM THOSE IN THE DUPONT CASE. THE BOARD, HOWEVER, DOES NOT HERE DECIDE WHETHER THIS APPLICATION COMES PROPERLY WITHIN THE PROVISIONS OF SECTION 6 (2), SINCE, IN ANY EVENT,

THE BOARD IS OF OPINION THAT THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS, IN THE CIRCUMSTANCES OF THIS CASE, AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

THE EVIDENCE ESTABLISHES THAT THE EMPLOYEES FOR WHOM THE APPLICANT SEEKS CERTIFICATION CONSTITUTES A DISTINCT GROUP OF CRAFTSMEN WORKING AT OR OUT OF A SEPARATE SHOP IN THE RESPONDENT'S PREMISES AND SUPERVISED BY FOREMEN WHOSE RESPONSIBILITIES INVOLVE ONLY THIS GROUP. WHILE THERE IS NO COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, THE RESPONDENT'S POLICY IS TO PAY THESE EMPLOYEES THE WAGE RATES AND FRINGE BENEFITS NEGOTIATED BETWEEN THE APPLICANT TRADE UNION AND CERTAIN MEMBERS OF THE TORONTO CONSTRUCTION ASSOCIATION, SUBJECT TO ADJUSTMENT IN CASES OF EMPLOYEES HIRED BEFORE APRIL 1ST. 1962, WHO MAY HAVE ELECTED TO ENJOY OTHER FRINGE BENEFITS OFFERED BY THE RESPONDENT. THE RESPONDENT HAS IN EFFECT RECOGNIZED THE BARGAINING INTERESTS OF THIS GROUP OF EMPLOYEES AS BEING THE SAME AS THOSE OF SIMILAR GROUPS OF CRAFTSMEN IN THE AREA. THIS PATTERN HAS EXISTED FOR MANY YEARS. THE RESPONDENT HAS, AS WELL, RECOGNIZED OTHER DISTINCTIVE GROUPS OF EMPLOYEES AND IN THE CASES OF CARETAKERS AND CHIEF CARETAKERS HAS ENTERED INTO COLLECTIVE AGREEMENTS WITH TRADE UNIONS. HAVING REGARD TO ALL OF THE FOREGOING CIRCUMSTANCES, THE DESIRE OF THE RESPONDENT TO AVOID "FRAGMENTATION" OF BARGAINING UNITS CANNOT BE GIVEN GREAT WEIGHT."

10049-64-R: International Union of Operating Engineers (Applicant) v. Canadian Canners Limited, Plant No. 1 (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT SEEKS TO BE CERTIFIED FOR AN INDUSTRIAL—
TYPE BARGAINING UNIT CONSISTING OF ALL EMPLOYEES OF THE RESPONDENT,
"SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN,
OFFICE STAFF AND STATIONARY ENGINEERS EMPLOYED IN THE BOILER
ROOM". IT IS OBVIOUS FROM SCHEDULE A, FILED BY THE RESPONDENT,
THAT THERE ARE EMPLOYEES OF A VARIETY OF DIFFERENT OCCUPATIONAL
CLASSIFICATIONS WHO WOULD BE INCLUDED WITHIN SUCH A BARGAINING UNIT.

AT THE FIRST HEARING OF THIS APPLICATION HELD ON MARCH 11TH, 1965, THE RESPONDENT, WITHOUT ANY PRIOR NOTICE OF ITS INTENTION TO DO SO, RAISED THE OBJECTION THROUGH ITS COUNSEL THAT THE APPLICANT COULD NOT BE CERTIFIED FOR THIS BARGAINING UNIT BECAUSE. AS HE ARGUED, IT WAS MANIFEST FROM THE APPLICANT'S CONSTITUTION THAT IT DID NOT TREAT EMPLOYEES IN THE OCCUPATIONAL CLASSIFICATIONS OF THOSE IN THE PROPOSED BARGAINING UNIT AS ELIGIBLE FOR MEMBERSHIP IN THE UNION. IN RAISING THE OBJECTION, COUNSEL RELIED ON THE MEMBERSHIP AND JURISDICTIONAL QUALIFICATIONS, AS SET FORTH IN A COPY OF THE APPLICANT'S CONSTITUTION AMENDED UP TO 1960, WHICH HAD BEEN FILED WITH THE BOARD UNDER THE GENERAL FILING PROVISIONS OF THE LABOUR RELATIONS ACT. THE REPRESENTATIVE FOR THE APPLICANT INFORMED THE BOARD THAT THIS OBJECTION, RAISED, AS IT WAS, WITHOUT PRIOR NOTICE TO THE UNION, TOOK HIM BY COMPLETE SURPRISE AND THAT HE WAS NOT AT THAT TIME PREPARED TO MEET IT. ON THIS BASIS THE REPRESENTATIVE FOR THE UNION ASKED FOR AN ADJOURNMENT SO THAT HE COULD PREPARE TO MEET THE OBJECTION BY INTER ALIA, AS HE INDICATED, PRESENTING

EVIDENCE TO THE EFFECT THAT, HOWEVER THE CONSTITUTION MAY BE CONSTRUED, THE APPLICANT UNION'S PRACTICE HAS BEEN, AND IS, TO ADMIT PERSONS IN THE OCCUPATIONAL CLASSIFICATIONS IN QUESTION TO MEMBERSHIP. THE APPLICANT'S REPRESENTATIVE ALSO INDICATED THAT THE UNION'S CONSTITUTION HAD BEEN AMENDED SINCE THE COPY REFERRED TO BY COUNSEL FOR THE RESPONDENT HAD BEEN FILED WITH THE BOARD. THE BOARD GRANTED THE ADJOURNMENT TO THE APPLICANT AND AT THE SAME TIME INSTRUCTED IT TO FILE, PRIOR TO THE TIME OF THE NEXT HEARING, A COPY OF ITS CONSTITUTION CONTAINING ALL THE AMENDMENTS TO DATE.

THE APPLICATION WAS THEREAFTER LISTED FOR A CONTINUATION OF HEARING TO TAKE PLACE, AS IT DID, ON MARCH 31ST. THE FORMAL NOTICE OF THIS HEARING SENT OUT BY THE REGISTRAR TO THE PARTIES PROVIDED THAT:-

"The purpose of the Continuation of Hearing is to hear evidence and argument concerning the jurisdiction of the applicant to admit to membership all of the persons in the bargaining unit proposed by the applicant in its application."

PRIOR TO THE SECOND HEARING ON MARCH 31ST, THE APPLICANT FILED A COPY OF ITS CONSTITUTION BEARING AMENDMENTS UP TO OCTOBER 1963.

AT THE SECOND HEARING COUNSEL FOR THE RESPONDENT REFERRED TO A NUMBER OF ARTICLES IN THE OCTOBER 1963 CONSTITUTION, INCLUDING ARTICLES X AND XIII, AND CONTENDED THAT THESE CONSTITU-TIONAL PROVISIONS MUST BE CONSTRUED AS OPERATING TO EXCLUDE PERSONS IN THE PROPOSED BARGAINING UNIT FROM ELIGIBILITY FOR MEMBERSHIP IN THE APPLICANT UNION. ALTHOUGH THE REPRESENTATIVE FOR THE UNION /AS ON SEVERAL OCCASIONS EXPRESSLY REMINDED BY THE BOARD THAT HE WAS ENTITLED TO ADDUCE EVIDENCE OF ANY PRACTICE, IF THAT EXISTED, THAT THE UNION HAD IN THE PAST ADMITTED OR ACCORDING TO ITS RESPONSIBLE OFFICERS COULD ADMIT SUCH PERSONS TO MEMBERSHIP, HE, ON EACH OCCASION, FOR REASONS BEST KNOWN TO HIMSELF, DECLINED TO EXERCISE THIS RIGHT. INSTEAD THE REPRESENTATIVE FOR THE UNION INDICATED THAT HE WAS CONTENT TO RELY ON THE PROVISIONS OF THE CONSTITUTION ITSELF AS SUFFICING TO ESTABLISH THAT MEMBERSHIP WAS OPEN TO ALL PERSONS IN THE PROPOSED UNIT. APART FROM MAKING REFERENCE IN HIS ARGUMENT TO THE CONTENTS OF THE CONSTITUTION, THE REPRESENTATIVE FOR THE UNION DID NOT, THEREFORE, SUBMIT ANY EVIDENCE WHATEVER TO INDICATE WHAT INTERPRETATION WAS PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR THAT THERE WAS ANY PAST PRACTICES OF THE UNION WITH RESPECT TO THE ADMISSION OF SUCH PERSONS TO MEMBERSHIP.

IN OUR OPINION, ARRIVED AT AFTER CAREFUL CONSIDERATION
OF ALL OF ITS RELEVANT ARTICLES, THE LANGUAGE OF THE CONSTITUTION
DOES IN TERMS PURPORT TO EXCLUDE FROM MEMBERSHIP EMPLOYEES IN
THE PROPOSED BARGAINING UNIT. IN THE ABSENCE OF ANY PROOF OF
UNEQUIVOCAL PRACTICE OR OTHER SATISFACTORY EVIDENCE TO THE
CONTRARY, WE ARE COMPELLED TO FIND, ON THE CASE AS PRESENTED
TO US, THAT THE RESTRICTIONS EMBODIED IN THE UNION'S CONSTITUTION
MEAN WHAT THEY SAY AND DO IN FACT OPERATE TO EXCLUDE PERSONS IN
THE PROPOSED UNIT FROM MEMBERSHIP.

HAVING REGARD TO THE PRINCIPLES IN GAYMER AND OULTRAM CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER #17,073, C.L.S. 76-429; THE OTTAWA CITIZEN CASE, C.C.H. IBID, #17,076, C.L.S. 76-431; JOHN E. RIDDELL AND SON LTD., N. D. APPLEGATE LTD., BOARD FILE 5282-62-R, AND GREAT LAKES OVERSEAS PACKING CO., BOARD FILE 9790-64-R, THE APPLICANT DOES NOT, THEREFORE, QUALIFY TO BE CERTIFIED AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WHICH IT SEEKS IN THE PRESENT CASE.

THE APPLICATION IS DISMISSED."

 $\frac{10067-64-R}{\text{(APPLICANT)}}$  Sheet Metal Workers' International Association Local Union #30 (APPLICANT) v. The Board of Education for the City of Toronto (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification in which the applicant trade union seeks certification as bargaining agent for

ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, IN THE EMPLOY OF THE RESPONDENT IN TORONTO, AND ASKS THE BOARD TO FIND THAT SUCH A UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING. THE CIRCUMSTANCES TO BE CONSIDERED IN THIS APPLICATION ARE, IN ALL MATERIAL RESPECTS, SIMILAR TO THOSE WHICH THE BOARD CONSIDERED IN AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THIS RESPONDENT MADE BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, BOARD FILE No. 10029-64-R. THE HISTORY OF THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE GROUP OF EMPLOYEES AFFECTED BY THAT DECISION IS SUBSTANTIALLY THE SAME AS THAT BETWEEN THE RESPONDENT AND THE GROUP OF EMPLOYEES AFFECTED BY THIS APPLICATION. FOR THE REASONS GIVEN IN THE EARLIER BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE THE BOARD FINDS THAT THE GROUP OF EMPLOYEES WITH RESPECT TO WHICH BARGAINING RIGHTS ARE SOUGHT IN THIS APPLICATION CONSTITUTES A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE INSTANT
CASE, THE BOARD FINDS THAT ALL SHEET METAL WORKERS AND SHEET
METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN TORONTO,
SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN,
CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE
FOR COLLECTIVE BARGAINING.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR KELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" DISSENT.

THE MAJORITY UNDER THE PROVISIONS OF SECTION 6 (1) OF
THE LABOUR RELATIONS ACT HAS DETERMINED THAT ALL SHEET METAL
WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF; THE
RESPONDENT IN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE
THE RANK OF FOREMAN, IS A UNIT OF EMPLOYEES THAT IS APPROPRIATE
FOR COLLECTIVE BARGAINING. WITH RESPECT, I CANNOT AGREE WITH
THIS DECISION.

The respondent informed the Board that there are approximately 450 persons employed in its maintenance department embracing 21 different trades all of which are engaged in the maintenance and repair work of the schools and other buildings of the respondent in Toronto. The number employed in each of the 21 trades ranges from 2 to 84 or an average of 21 tradesmen.

SEPARATE BARGAINING UNITS FOR EACH TRADE CAN WELL RESULT IN THE COMPLETE ATOMIZATION OF THE PRESENT ALL EMPLOYEE UNIT AND ACT AS A DISTINCT IMPEDIMENT IN THE COLLECTIVE BARGAINING PROCESS. IF A TRADE UNION APPLIED TO THE BOARD TO BE CERTIFIED AS THE BARGAINING AGENT FOR EACH OF THESE 21 TRADES AND THE APPLICATIONS WERE SUCCESSFUL, THERE WOULD BE 21 CERTIFICATES ISSUED TO 21 UNIONS. 21 SEPARATE BARGAINING UNITS AND 21 SETS OF NEGOTIATIONS. IF NEGOTIATIONS WERE UNSUCCESSFUL, THERE COULD FOLLOW THE APPOINTMENT OF 21 CONCILIATION OFFICERS AND 21 CONCILIATION BOARDS, 21 STRIKES AND EVENTUALLY 21 COLLECTIVE AGREEMENTS. WITH 21 DIFFERENT EXPIRY DATES. THIS IS AN UNDUE AND UNWARRANTED BURDEN TO PLACE ON THE RESPONDENT AND COULD WELL BRING TURMOIL RATHER THAN INDUSTRIAL PEACE IN THE MAINTENANCE DEPARTMENT. MOREOVER, MATTERS SUCH AS PENSIONS AND GROUP INSURANCE CANNOT BE BARGAINED FOR SEPARATELY BY FRAGMENTS OF THE OVERALL GROUP OF EMPLOYEES.

FOR THESE REASONS, I FIND THAT THE APPROPRIATE BARGAINING UNIT CONSISTS OF ALL EMPLOYEES IN THE MAINTENANCE DEPARTMENT OF THE RESPONDENT AT TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS BOUND BY SUBSISTING COLLECTAVE AGREEMENTS, PERSONS INCLUDED IN BARGAINING UNITS DEFINED IN CERTIFICATES ISSUED BY THIS BOARD AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. AS LESS THAN 45% OF THE EMPLOYEES IN THIS UNIT ARE MEMBERS OF THE APPLICANT UNION, I WOULD HAVE DISMISSED THE APPLICATION."

10112-64-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT)

#### - AND -

10118-64-R: BROTHERHOOD OF PAINTERS DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL 557 (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT).

The applicant in each of these cases sought certification as bargaining agent for a unit of employees of the respondent pertaining to its particular craft. The Board's decision in each case was similar to that rendered in application 10067-64-R, reported on page 126 above.

10204-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Cross Town Paving Company Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT IS SEEKING A UNIT CONSISTING OF ALL HEAVY CONSTRUCTION LABOURERS. THE RESPONDENT SEEKS TO RESTRICT THE BARGAINING UNIT TO HEAVY CONSTRUCTION LABOURERS ENGAGED IN THE CONSTRUCTION OF BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS. IN SUPPORT THEREOF, THE RESPONDENT RELIES ON TWO PRIOR DECISIONS OF THE BOARD, ROBERT MCALPINE LTD., BOARD

FILE No. 1009-64-R, AND KILMER, VAN NOSTRAND LIMITED, BOARD FILE No. 10207-65-R. IT SHOULD BE NOTED THAT THE FINDING RESPECTING THE BARGAINING UNIT IN THE FIRST MENTIONED CASE WAS PREFACED BY THE WORDS, "IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE" WHILE IN THE SECOND CASE, THE FINDING RESPECTING THE UNIT WAS PRECEDED BY, "HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES".

FURTHERMORE, IN EACH OF THE CASES THE PARTIES WERE ALREADY BOUND BY EXISTING COLLECTIVE AGREEMENTS WHICH COVERED "ROAD PROJECTS".

IN THE PRESENT CASE, THE RESPONDENT HAS NO COLLECTIVE AGREEMENT WITH THE APPLICANT.

Thus, even if it could be argued that the two cases referred to establish some sort of policy, the present case is clearly distinguishable therefrom because the applicant has no bargaining rights for any employees of the respondent.

IN THESE CIRCUMSTANCES, THE NORMAL PRACTICE OF THE BOARD IS TO CERTIFY FOR ALL CONSTRUCTION LABOURERS OF AN EMPLOYER WITHOUT QUALIFICATION AS TO THE TYPE OR TYPES OF WORK IN WHICH THEY MAY BE EMPLOYED. IT IS NOTED, HOWEVER, THAT THE APPLICANT SEEKS TO RESTRICT ITS APPLICATION TO ALL HEAVY CONSTRUCTION LABOURERS WHILE THE RESPONDENT PROPOSES HEAVY CONSTRUCTION LABOURERS EMPLOYED ON BRIDGES AND STRUCTURES ASSOCIATED WITH ROAD PROJECTS. THIS QUALIFICATION OF "HEAVY CONSTRUCTION" LABOURERS HAS BEEN PROPOSED IN A NUMBER OF RECENT CASES AND STEMS FROM THE FACT THAT ANOTHER LOCAL, No. 506, OF THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA FUNCTIONS IN THE SAME GEOGRAPHICAL AREA. EACH LOCAL HAS NUMEROUS COLLECTIVE BARGAINING AGREEMENTS WITH EMPLOYERS IN THE METROPOLITAN TORONTO AREA AND, IN A NUMBER OF INSTANCES, EMPLOYERS HAVE AGREEMENTS WITH BOTH LOCALS.

WHERE AN APPLICATION IS MADE BY ONE OF THE LOCALS FOR AN EMPLOYER WHICH HAS A COLLECTIVE AGREEMENT WITH THE OTHER LOCAL, NO PROBLEM ARISES IN FOLLOWING THE BOARD'S USUAL DESCRIPTION OF "ALL CONSTRUCTION LABOURERS" BECAUSE PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT WOULD BE EXPRESSLY EXEMPTED THEREFROM. WHERE, HOWEVER, NO SUCH COLLECTIVE AGREEMENT EXISTS. PROBLEMS MAY ARISE FOR THE PARTIES AND THE OTHER LOCAL IN THE FUTURE IF AN ALL-CONSTRUCTION-LABOURERS UNIT IS GRANTED. FURTHER-MORE, OF COURSE, ONE OF THE LOCALS SEEKING CERTIFICATION WOULD HAVE TO ORGANIZE THE LABOURERS ON ALL PROJECTS OF AN EMPLOYER EVEN THOUGH ONE OR MORE OF THE PROJECTS WERE CLAIMED BY THE OTHER LOCAL AS FALLING UNDER ITS JURISDICTION. IT IS FOR THIS REASON THAT THE PRESENT APPLICANT HAS BEEN PROPOSING A UNIT CONSISTING OF HEAVY CONSTRUCTION LABOURERS, THE TERM "HEAVY CONSTRUCTION" BEING. IN ITS VIEW, A GENERAL DESCRIPTION OF ITS JURISDICTION. NO DOUBT THE RESPONDENT'S SUBMISSION TO THE EXAMINER IN THIS CASE WITH RESPECT TO THE BARGAINING UNIT AND MORE PARTICULARLY ITS USE OF THE SAME TERM, "HEAVY CONSTRUCTION LABOURERS", STEMS FROM A REALIZATION OF THE EXISTENCE OF A JURISDICTIONAL PROBLEM.

THE BOARD HAS GIVEN SERIOUS CONSIDERATION TO THE PROBLEM AND, HAVING REGARD TO THE PATTERNS OF COLLECTIVE BARGAINING

WHICH HAVE DEVELOPED IN THE INDUSTRY IN THE METROPOLITAN TORONTO AREA, HAS CONCLUDED THAT IT WOULD BE UNREALISTIC TO ATTEMPT, IN THIS AREA, TO INSIST ON ITS USUAL DESCRIPTION OF ALL CONSTRUCTION LABOURERS WITHOUT FURTHER QUALIFICATION. OUR CONCLUSION IS STRENGTHENED BY THE RECENT FILING WITH THE BOARD (WITHOUT REFERENCE TO ANY PARTICULAR CASE) BY THE PARENT UNION OF THE APPLICANT LOCAL OF A DIRECTIVE FROM THE INTERNATIONAL PRESIDENT CLEARLY DELINEATING THE JURISDICTION OF THE TWO LOCALS.

THERE REMAINS, THEN, THE QUESTION OF HOW TO DESCRIBE THE UNIT. THE WORDS "HEAVY CONSTRUCTION" ARE FAR TOO VAGUE AND WOULD REQUIRE ELABORATE AND, IN OUR VIEW, A SOMEWHAT ARTIFICIAL DEFINITION. ON THE OTHER HAND, THE JURISDICTION OF LOCAL 506 APPEARS TO US TO BE EASIER TO DESCRIBE IN MORE MEANINGFUL TERMS AND WITHOUT ELABORATE DEFINITION. IN ESSENCE, ITS JURISDICTION IS CONFINED TO BUILDING CONSTRUCTION OR WRECKING. IN ITS LAST COLLECTIVE AGREEMENT WITH THE TORONTO CONSTRUCTION ASSOCIATION, THE EMPLOYEES COVERED ARE IHOSE ENGAGED IN BUILDING PROJECTS.

AFTER DUE CONSIDERATION, WE HAVE CONCLUDED THAT WHERE AN APPLICATION IS MADE BY LOCAL 506, THE BARGAINING UNIT SHOULD BE DESCRIBED IN TERMS OF CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS. WHERE THE APPLICATION IS BY LOCAL 183, THE UNIT SHOULD BE DESCRIBED IN TERMS OF ALL CONSTRUCTION LABOURERS SAVE AND EXCEPT CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS. IT MAY BE NECESSARY TO ADD A CLARITY NOTE IN MUCH THE SAME WAY AS IN HOSPITAL UNITS, DEFINING MORE PRECISELY WHAT IS INCLUDED IN THE TERM "BUILDING PROJECTS". HOWEVER, IN THE PRESENT CASE, THE BOARD DOES NOT PROPOSE TO DO THIS SINCE LOCAL 506 IS NOT BEFORE US.

THE BOARD NOTES THAT THE OTHER EXCLUSIONS PROPOSED BY
THE APPLICANT ARE NOT PROPOSED BY THE RESPONDENT. IT IS NOT THE
PRACTICE OF THE BOARD TO INCLUDE SUCH EXCEPTIONS IN ITS USUAL
LABOURERS UNIT AND, WITHOUT EVIDENCE AND ARGUMENT THEREON, IT
DOES NOT PROPOSE TO INCLUDE THE PROPOSED EXCEPTIONS IN THIS CASE."

### INDEXED ENDORSEMENTS - TERMINATION

9964-64-R: HENRY BELL HOPKINSON (APPLICANT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (RESPONDENT) V. METAL CLOSURES CANADA LIMITED (INTERVENER). (DISMISSED).

(Re: METAL CLOSURES CANADA LIMITED, SCARBOROUGH, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration terminating the bargaining rights of the respondent pursuant to the provisions of section 43 of The Labour Relations Act.

THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT ENTERED INTO ON MAY 27th, 1963.

The intervener and Printing Specialties & Paper Products Union, Local 466 are parties to a collective agreement effective from the 1st day of April, 1964.

THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND PRINTING SPECIALTIES & PAPER PRODUCTS UNION, LOCAL 466.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE APPLICANT IS NOT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

SECTION 43 (2) OF THE LABOUR RELATIONS ACT READS IN PART AS FOLLOWS:

"ANY OF THE EMPLOYEES IN THE BARGAINING UNIT
DEFINED IN A COLLECTIVE AGREEMENT MAY APPLY TO
THE BOARD FOR A DECLARATION THAT THE TRADE UNION
NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING
UNIT."

WHILE SECTION 43 USES THE INDEFINITE ARTICLE "A" IN REFERRING TO THE COLLECTIVE AGREEMENT, WE ARE OF OPINION THAT ONLY EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT TO WHICH THE RESPONDENT UNION IS A PARTY CAN MAKE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS OF THE RESPONDENT. IN OTHER WORDS, AN EMPLOYEE MAKING AN APPLICATION UNDER SECTION 43 OF THE LABOUR RELATIONS ACT MUST BE AN EMPLOYEE WHO IS REPRESENTED BY THE TRADE UNION CONCERNED.

SINCE THE APPLICANT IN THIS MATTER WAS NOT, AND NEVER HAS BEEN, REPRESENTED BY THE RESPONDENT TRADE UNION HE CAN NOT BE DESCRIBED AS AN EMPLOYEE IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT AS REQUIRED BY SECTION 43 (2) OF THE ACT AND ACCORDINGLY HAS NO STATUS TO BRING THIS APPLICATION.

THIS APPLICATION IS THEREFORE DISMISSED."

10139-64-R: North Bay Hospital Commission operating the North Bay Civic Hospital (Applicant) v. Canadian Union of Public Employees and its Local #139 (Respondent). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION BY THE EMPLOYER FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION UNDER SUBSECTION 2 OF SECTION 45 OF THE LABOUR RELATIONS ACT.

The National Union of Public Service Employees of which the respondent trade union is the successor, as the parties agree, was certified by the Board on July 16th, 1962, for a unit of employees of the applicant. A collective

AGREEMENT WAS ENTERED INTO BETWEEN THE PARTIES, DATED NOVEMBER 20TH, 1962, AND TERMINATING ON DECEMBER 31ST, 1964. THERE WAS PROVISION FOR THE GIVING OF NOTICE, WITHIN THE SIXTY DAY PERIOD PRIOR TO TERMINATION, OF DESIRE TO AMEND THE AGREEMENT. SUCH NOTICE WAS GIVEN TO THE APPLICANT BY THE RESPONDENT ON NOVEMBER 2ND, 1964. BY ITS LETTER OF THAT DATE, THE RESPONDENT GAVE NOTICE OF ITS DESIRE TO BARGAIN AND STATED THAT ITS PROPOSALS WOULD BE FORWARDED AS SOON AS POSSIBLE. NO FURTHER COMMUNICATION WAS MADE BY THE RESPONDENT TO THE APPLICANT WITH RESPECT TO COLLECTIVE BARGAINING UNTIL MARCH 29TH, 1965, AFTER THIS APPLICATION WAS MADE. WHEN THE RESPONDENT FORWARDED ITS PROPOSALS TO THE APPLICANT.

IT IS CLEAR THAT THE RESPONDENT TRADE UNION, HAVING GIVEN NOTICE TO THE APPLICANT UNDER SECTION 40 OF THE LABOUR RELATIONS ACT, FAILED TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS OF THE GIVING OF THE NOTICE AND FURTHER ALLOWED A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT DID NOT SEEK TO BARGAIN. UNDER THE PROVISIONS OF SECTION 45(2), THEN, IT LIES IN THE DISCRETION OF THE BOARD TO DECLARE AT ONCE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT, OR TO DIRECT A REPRESENTATION VOTE, OR TO DISMISS THE APPLICATION. THE APPLICANT REQUESTS, IN THE CIRCUMSTANCES OF THIS CASE, THAT A REPRESENTATION VOTE BE TAKEN.

THE PURPOSE OF SECTION 45 (2) OF THE ACT HAS BEEN DISCUSSED BY THE BOARD IN SEVERAL CASES. IN PARTICULAR, REFERENCE MAY BE MADE TO THE WALMER TRANSPORT CO. LTD. CASE, (1953) 2 C.L.S. 76-404, WHERE THE BOARD STATED,

THE PURPOSE OF THE SECTION IS TO ENSURE THAT A UNION WHICH HAS ACQUIRED BARGAINING RIGHTS ON BEHALF OF EMPLOYEES WILL ACTIVELY PURSUE AND FORWARD THEIR INTERESTS IN BARGAINING WITH THEIR EMPLOYER. IF THE UNION FAILS IN THIS RESPECT, THE EMPLOYEES MAY SEEK TO RID THEMSELVES OF THAT UNION SO THAT THEY MAY BE FREE TO SELECT ANOTHER BARGAINING AGENT OR TO ENGAGE IN INDIVIDUAL BARGAINING WITH THE EMPLOYER WHICH MIGHT OTHERWISE BE RENDERED DIFFICULT OR EVEN IMPOSSIBLE BY SECTION 53 OF THE ACT. IN THE CIRCUM-STANCES SET FORTH IN THE SECTION, THE EMPLOYER MAY ALSO SEEK A DECLARATION TERMINATING BARGAINING RIGHTS OF THE UNION. HIS PURPOSE IN MAKING SUCH A DECLARATION MAY BE THAT HE WISHES TO ALTER RATES OF WAGES OR OTHER WORKING CONDITIONS WHICH HE IS INHIBITED FROM DOING BECAUSE OF THE PROVISIONS OF SECTION 53: OR HE MAY WISH TO AVOID THE RISK OF PROSECUTION SHOULD HE REFUSE TO BARGAIN WITH A TRADE UNION THAT HAS "SLEPT ON ITS RIGHTS" FOR A LONG PERIOD OF TIME, WHERE HE IS CONVINCED THAT THE UNION NO LONGER REPRESENTS HIS EMPLOYEES; OR HE MAY WISH TO ACCORD RECOGNITION TO ANOTHER UNION WHICH HAS SATISFIED HIM THAT IT DOES NOW REPRESENT HIS EMPLOYEES, A COURSE WHICH HE IS PROHIBITED FROM ADOPTING SO LONG AS THE BARGAINING RIGHTS OF THE OTHER UNION SUBSIST. In the instant case there is no suggestion in the evidence that the applicant employer has been prejudiced in any way, or that any of the considerations mentioned in the passage quoted apply here. Reference may also be made to the Dominion Stores Limited Case, (1956) C.C.H. Canadian Labour Law Reporter, \$16,047, where the Board stated,

THE PURPOSE OF SECTION 43 (NOW SECTION 45) OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 (NOW SECTION 11) OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY

SECTION 45 (2) CONFERS NO "RIGHT" UPON AN APPLICANT BEYOND THE RIGHT TO MAKE THE APPLICATION IN WHICH THE TRADE UNION MAY BE CALLED UPON TO EXPLAIN DELAY IN BARGAINING.

AT THE HEARING IN THIS MATTER EVIDENCE WAS GIVEN WITH RESPECT TO THE REPEATED EFFORTS OF THE RESPONDENT'S OFFICERS TO CONVENE A MEMBERSHIP MEETING AND OBTAIN DIRECTIONS FROM THE MEMBERSHIP WITH RESPECT TO COLLECTIVE BARGAINING. ALTHOUGH ON SEVERAL OCCASIONS THESE EFFORTS PROVED ABORTIVE, IT IS THE CASE THAT BY MARCH 1965 AT ABOUT THE TIME THIS APPLICATION WAS MADE THE RESPONDENT HAD PREPARED THE SET OF PROPOSALS WHICH WERE SUBMITTED TO THE APPLICANT AS ABOVE NOTED. THROUGHOUT THIS PERIOD A RELATIONSHIP WITH THE APPLICANT WAS MAINTAINED, ALTHOUGH NO BARGAINING OR ATTEMPT TO BARGAIN TOOK PLACE. THIS IS NOT A CASE WHERE THE TRADE UNION COULD BE SAID TO HAVE ABANDONED ITS BARGAINING RIGHTS NOR COULD THE EMPLOYEES BE SAID TO HAVE ABANDONED THE TRADE UNION, HOWEVER APATHETIC THEIR ATTITUDE TOWARDS NEGOTIATIONS WITH THE APPLICANT MAY HAVE BEEN.

IN THE <u>DOMINION STORES LIMITED CASE</u>, <u>SUPRA</u>, THE BOARD, IN THE PASSAGE QUOTED, WENT ON TO SAY,

IF A REASONABLE DOUBT ARISES AS TO THE DESIRES OF THE EMPLOYEES AT THAT STAGE, THE BOARD MAY TEST THOSE DESIRES BY DIRECTING A REPRESENTATION VOTE. HOWEVER, WHERE THE TARDINESS OF THE

UNION IS EXCUSABLE AND ESPECIALLY WHERE IT STILL COMMANDS THE ALLEGIANCE OF A MAJORITY OF THE EMPLOYEES, THE APPLICATION SHOULD BE DISMISSED.

IT SHOULD BE BORNE IN MIND THAT THIS IS NOT A CASE WHERE THE UNION HAS "STAKED OUT A CLAIM" WITH RESPECT TO EMPLOYEES WHOM IT HAS THEN FAILED TO REPRESENT. ON THE CONTRARY, THE RESPONDENT TRADE UNION HAS NEGOTIATED A COLLECTIVE AGREEMENT ON BEHALF OF EMPLOYEES, AND HAS MAINTHENED A RELATIONSHIP WITH THEM. AND WITH THE EMPLOYER ON THEIR BEHALF. ON THE EVIDENCE, IT APPEARS THAT THERE ARE SOME SEVENTY-FIVE PERSONS IN THE BARGAINING UNIT. THERE IS PROVISION IN THE COLLECTIVE AGREEMENT FOR A VOLUNTARY CHECK-OFF. AND THE EVIDENCE OF THE APPLICANT EMPLOYER IS THAT IT IS IN POSSESSION OF CHECK-OFF AUTHORIZATION CARDS FOR FORTY-TWO PERSONS. TWELVE OF THESE CARDS HAVE BEEN RECEIVED BY THE APPLICANT SINCE THE MAKING OF THIS APPLICATION. EXCEPT WITH RESPECT TO THE CARDS SUBMITTED SINCE THE MAKING OF THIS APPLICATION. THIS EVIDENCE OF EMPLOYEE MEMBERSHIP IN THE RESPONDENT TRADE UNION IS AT BEST PRESUMPTIVE ONLY. WHILE THERE IS THUS LITTLE DIRECT EVIDENCE GOING TO THE QUESTION OF EMPLOYEE SUPPORT FOR THE RESPONDENT TRADE UNION, IT SHOULD BE NOTED THAT THERE IS NO POSITIVE EVIDENCE THAT ANY EMPLOYEES IN THE BARGAINING UNIT NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. IN ANY EVENT. HAVING REGARD TO ALL OF THE EVIDENCE AND TO THE PROPOSITIONS SET OUT IN THE CASES REFERRED TO ABOVE, IT IS OUR OPINION THAT THIS IS NOT A CASE IN WHICH A DECLARATION TERMINATING BARGAINING RIGHTS SHOULD BE MADE OR A REPRESENTATION VOTE ORDERED.

THE APPLICATION IS DISMISSED."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" DISSENT.

THE RESPONDENT UNION WAS CERTIFIED ON JULY 16TH, 1962.

A COLLECTIVE AGREEMENT WAS ENTERED INTO WITH THE APPLICANT EFFECTIVE OCTOBER 16TH, 1962 AND TO TERMINATE ON DECEMBER 31ST, 1964.

WRITTEN NOTICE OF DESIRE TO BARGAIN FOR THE RENEWAL OF THE AGREEMENT WAS SENT TO THE APPLICANT BY THE RESPONDENT UNION ON NOVEMBER 2ND, 1964 IN ACCORDANCE WITH THE TERMINATION PROVISION OF THE COLLECTIVE AGREEMENT. THE NOTICE, WHICH TOOK THE FORM OF A LETTER, STATED THAT THE UNION'S PROPOSALS WOULD BE FORWARDED TO THE APPLICANT AS SOON AS POSSIBLE.

The applicant could have filed this application on January 1st when the sixty day period set out in section 45 (2) of the Act, during which the respondent failed to bargain, would have elapsed. However, the applicant waited until March 18th, 1965 or until 136 days had elapsed after the respondent union filed notice of desire to bargain before filing this application.

ON MARCH 29TH, 1965 OR 11 DAYS AFTER THE DATE OF THE FILING OF THIS APPLICATION AND 147 DAYS AFTER FILING NOTICE OF DESIRE TO BARGAIN AND DURING WHICH DID NOT EVEN CONTACT THE APPLICANT CONCERNING BARGAINING, THE APPLICANT RECEIVED THE UNION'S PROPOSALS FOR AMENDMENTS TO THE COLLECTIVE AGREEMENT.

THE APPLICANT REQUESTS THE BOARD TO DIRECT A REPRESENTATION VOTE TO ASCERTAIN IF THE EMPLOYEES WISH TO BARGAIN COLLECTIVELY WITH THE APPLICANT THROUGH THE RESPONDENT TRADE UNION. WITH RESPECT, I BELIEVE THE APPLICANT IS ENTITLED TO HAVE THE BOARD DIRECT SUCH A VOTE.

THE MAJORITY DECISION HOLDS THAT BECAUSE THERE ARE 42 OUT OF 75 EMPLOYEES ON THE CHECK-OFF UNDER THE RELEVANT PROVISION OF THE COLLECTIVE AGREEMENT THAT IS SUFFICIENT EVIDENCE THE EMPLOYEES WANT THE TRADE UNION TO REPRESENT THEM AND NO VOTE IS REQUIRED.

According to the evidence adduced at the HEARING, 12 of THESE CHECK-OFF FORMS WERE SIGNED BY EMPLOYEES AFTER THE DATE OF THIS APPLICATION, MARCH 18th, 1965. THIS MEANS THAT THERE WERE ONLY 30 EMPLOYEES OR 40 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT WHO WERE HAVING THEIR UNION DUES CHECKED-OFF ON THE DATE OF THE APPLICATION. FURTHERMORE, UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT THE EMPLOYEES WERE ONLY ENTITLED TO REVOKE THE CHECK-OFF AUTHORIZATION DURING THE THIRTY DAY PERIOD PRIOR TO THE TERMINATION OF THE AGREEMENT ON DECEMBER 31st, 1964. THEREFORE, THESE 30 EMPLOYEES COULD NOT HAVE REVOKED THEIR CHECK-OFF AUTHORIZATION AFTER DECEMBER 31st, 1964 EVEN IF THEY HAD DESIRED TO DO SO. THEY WERE LOCKED-IN UNDER THE PROVISIONS OF SECTION 59 OF THE ACT. THEREFORE, THE FACT THAT THEY WERE ON CHECK-OFF ON JANUARY 1ST. 1965 AND THEREAFTER DOES NOT NECESSARILY REPRESENT THEIR TRUE WISHES AS TO WHETHER OR NOT THEY DESIRE THE UNION TO CONTINUE TO REPRESENT THEM AT THIS TIME. THIS CAN ONLY BE ASCERTAINED BY A REPRESENTATION VOTE BY SECRET BALLOT.

THE MAJORITY AWARD STATES THAT NO EMPLOYEES NOTIFIED THE BOARD THAT THEY WERE IN FAVOUR OF THE APPLICATION. THE INFERENCE IT DRAWS FROM THIS STATEMENT IS THAT THE EMPLOYEES, THEREFORE, MUST BE OPPOSED TO THE APPLICATION. WITH RESPECT, I CANNOT AGREE WITH THIS CONCLUSION.

FORM 20, NOTICE TO EMPLOYEES OF APPLICATION FOR
DECLARATION TERMINATING BARGAINING RIGHTS, WAS POSTED BY THE
DIRECTION OF THE REGISTRAR (FORM 22) IN CONSPICUOUS PLACES
WHERE IT WAS MOST LIKELY TO COME TO THE ATTENTION OF ALL THE
EMPLOYEES WHO MAY BE AFFECTED BY THE APPLICATION. IT ADVISES THE
EMPLOYEES OF THE MAKING OF THE APPLICATION AND THE DATE AND TIME
OF THE HEARING OF THE APPLICATION BY THE BOARD. THE FORM THEN
STATES:-

"5. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED
BY THE APPLICATION AND DESIRING TO MAKE
REPRESENTATIONS TO THE BOARD IN OPPOSITION TO

THIS APPLICATION MUST SEND TO THE BOARD A

(EMPHASIS ADDED).

No such statement of desire was received by the Board. Surely the only inference that can be drawn from this fact is that the employees are either in favour of the application or completely indifferent. This is another reason why I believe a vote should be ordered.

There is another aspect which I think should be considered. In dismissing the application, the Board is making it mandatory upon the parties to meet and bargain collectively for the renewal of the collective agreement. The delay of 147 days in preparing proposals and the almost complete apathy of the employees who did not attend the union meetings called in the months of November, January, February and March for the express purpose of drafting proposals for the amendments to the agreement does not create a proper climate for the parties to bargain in good faith and make every reasonable effort to make a collective agreement.

IF A VOTE WAS ORDERED AND THE UNION WINS THE VOTE, THEN
THE APPLICANT CAN SIT DOWN AND BARGAIN KNOWING FULL WELL THAT THE
EMPLOYEES WANT TO BARGAIN COLLECTIVELY THROUGH THE TRADE UNION.
IF THE UNION LOSES THE VOTE, THEN MANAGEMENT WILL NO LONGER
BE SHACKLED BY THE PROVISIONS OF SECTION 59 OF THE ACT AND WILL
BE FREE TO MAKE ANY CHANGES IN WORKING CONDITIONS WHICH IN ITS
OPINION ARE NECESSARY AND DESIRABLE.

For these reasons, I would have directed a representation vote. The employees would be asked if they wish to bargain collectively with their employer through the applicant union."

10251-65-R: Holley Electric Ltd. (Applicant) v. International Brotherhood of Electrical Workers, Local Union 353 (Respondent). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application by the employer for a declaration terminating the bargaining rights of the respondent trade union. The respondent was certified by this Board on February 4th, 1965 as bargaining agent for all journeymen electricians, helpers, and apprentices in the employ of Holley Electric Limited within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running south west of Yonge Street,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

ON FEBRUARY 9TH, 1965, THE RESPONDENT TRADE UNION BY LETTER GAVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT. ON FEBRUARY 15TH, 1965 THE APPLICANT EMPLOYER REPLIED TO THIS LETTER SUGGESTING THAT A MEETING BE HELD ON FEBRUARY 22ND, 1965 AT 2 P.M. ON FEBRUARY 18TH. 1965 THE RESPONDENT TRADE UNION REPLIED AND REQUESTED THAT THE MEETING BE DEFERRED. THE UNION STATED THAT IT WAS ENGAGED IN NEGOTIATIONS WITH THE ELECTRICAL CONTRACTORS ASSOCIATION OF TORONTO AND WITH THE METROPOLITAN ELECTRICAL CONTRACTORS ASSOCIATION AND ADDED "WE WOULD PREFER TO LEAVE NEGOTIATIONS WITH INDIVIDUAL FIRMS UNTIL AFTER AN AGREEMENT HAS BEEN REACHED WITH ONE OR BOTH OF THE CONTRACTORS ASSOCIATIONS". THE APPLICANT COMPANY DID NOT REPLY TO THIS LETTER. THE ONLY CONTACT BETWEEN THE PARTIES BETWEEN THE DATE OF THIS LETTER AND THE DATE OF THE APPLICATION OCCURRED ON MARCH 9TH, 1965 WHEN AN ORGANIZER FOR THE RESPONDENT CALLED AT THE OFFICES OF THE COMPANY AND SPOKE TO THE FOREMAN. THE ONLY MATTER OF ANY RELEVANCE TO THIS APPLICATION AT THAT MEETING WAS A QUERY BY THE APPLICANT'S FOREMAN AS TO THE LENGTH OF TIME THE NEGOTIATIONS WITH THE CONTRACTORS ASSOCIATIONS MIGHT TAKE.

THE APPLICANT CONTENDS THAT THE RESPONDENT TRADE UNION HAVING GIVEN NOTICE PURSUANT TO SECTION 11 HAS FAILED TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS. IF WE ASSUME THAT THE LETTER SENT BY THE UNION ON FEBRUARY 18TH, 1965 (WITH WHICH WAS ENCLOSED A COPY OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION AND ONE OF THE ELECTRICAL CONTRACTORS ASSOCIATIONS) DID NOT CONSTITUTE "BARGAINING" THEN IT WOULD APPEAR THAT THIS APPLICATION PROPERLY COMES WITHIN THE PROVISIONS OF SECTION 45(2). THE MEETING BETWEEN THE RESPONDENT'S ORGANIZER AND THE COMPANY'S FOREMAN WAS NOT AND DID NOT PURPORT TO BE "BARGAINING" IN ANY SENSE. THE ABOVE ASSUMPTION, HOWEVER, IS QUESTIONABLE. IN THE OLIVER LUMBER CASE, O.L.R.B. MONTHLY REPORTS, AUGUST 1963, P. 280, THE BOARD HELD THAT A CORRESPONDENCE WITH RESPECT TO THE ARRANGING OF MEETINGS-BUT CONTAINING AS WELL SPECIFIC PROPOSALS-DID CONSTITUTE "BARGAINING". THE CIRCUMSTANCES OF THE OLIVER LUMBER CASE. HOWEVER, WERE NOT IDENTICAL WITH THOSE OF THE INSTANT CASE AND THE BOARD MAKES NO FINDING ON THE QUESTION WHETHER BARGAINING WAS, IN FACT. CARRIED ON IN THE CIRCUMSTANCES OF THE INSTANT CASE.

ON THE ASSUMPTION THEN THAT THIS APPLICATION IS PROPERLY BROUGHT UNDER THE PROVISIONS OF SECTION 45(2) OF THE ACT, IT IS WITHIN THE DISCRETION OF THE BOARD TO TERMINATE THE BARGAINING RIGHTS OF THE TRADE UNION TO DIRECT A REPRESENTATION VOTE OR TO DISMISS THE APPLICATION AS MAY BE APPROPRIATE IN THE CIRCUMSTANCES. IN THE WALMER TRANSPORT CO. LTD. CASE, (1953) 2 C.L.S. 76-404, THE BOARD STATED WITH RESPECT TO SECTION 45(2):

THE PURPOSE OF THE SECTION IS TO ENSURE THAT A UNION

WHICH HAS ACQUIRED BARGAINING RIGHTS ON BEHALF OF EMPLOYEES WILL ACTIVELY PURSUE AND FORWARD THEIR INTERESTS IN BARGAINING WITH THEIR EMPLOYER. IF THE UNION FAILS IN THIS RESPECT. THE EMPLOYEES MAY SEEK TO RID THEMSELVES OF THAT UNION SO THAT THEY MAY BE FREE TO SELECT ANOTHER BARGAINING AGENT OR TO ENGAGE IN INDIVIDUAL BARGAINING WITH THE EMPLOYER WHICH MIGHT OTHERWISE BE RENDERED DIFFICULT OR EVEN IMPOSSIBLE BY SECTION 53 OF THE ACT. IN THE CIRCUMSTANCES SET FORTH IN THE SECTION, THE EMPLOYER MAY ALSO SEEK A DECLARATION TERMINATING BARGAINING RIGHTS OF THE UNION. HIS PURPOSE IN MAKING SUCH A DECLARATION MAY BE THAT HE WISHES TO ALTER RATES OF WAGES OR OTHER WORKING CONDITIONS WHICH HE IS INHIBITED FROM DOING BECAUSE OF THE PROVISIONS OF SECTION 53; OR HE MAY WISH TO AVOID THE RISK OF PROSECUTION SHOULD HE REFUSE TO BARGAIN WITH A TRADE UNION THAT HAS "SLEPT ON ITS RIGHTS" FOR A LONG PERIOD OF TIME. WHERE HE IS CONVINCED THAT THE UNION NO LONGER REPRESENTS HIS EMPLOYEES: OR HE MAY WISH TO ACCORD RECOGNITION TO ANOTHER UNION WHICH HAS SATISFIED HIM THAT IT DOES NOW REPRESENT HIS EMPLOYEES, A COURSE WHICH HE IS PROHIBITED FROM ADOPTING SO LONG AS THE BARGAINING RIGHTS OF THE OTHER UNION SUBSIST.

THE REPRESENTATIVE OF THE COMPANY SUGGESTED THAT THE APPLICANT EMPLOYER HAS BEEN PREJUDICED INASMUCH AS ITS BARGAINING POSITION WOULD BE ALTERED TO ITS DETRIMENT BY THE FACT OF AGREEMENTS BETWEEN THE RESPONDENT AND LARGE NUMBERS OF EMPLOYERS IN THE AREA. THERE IS NO SUGGESTION IN THE EVIDENCE THAT THE EMPLOYER HAS BEEN PREJUDICED IN ANY OF THE WAYS MENTIONED IN THE PASSAGE QUOTED.

IN THE CIRCUMSTANCES DESCRIBED, IT APPEARS TO THE BOARD THAT THIS IS NOT A CASE WHERE THE TRADE UNION HAS "STAKED OUT A CLAIM" WITH RESPECT TO A GROUP OF EMPLOYEES AND THEN FAILED TO REPRESENT THEM. BY HOLDING OFF NEGOTIATIONS WITH THIS EMPLOYER THE RESPONDENT HAS—BY THE EMPLOYER'S OWN ARGUMENT—CREATED THE LIKELIHOOD OF A BETTER SETTLEMENT FROM THE EMPLOYEES POINT OF VIEW THAN WOULD OTHERWISE BE REACHED. THE EMPLOYER BY ITS SILENCE MUST BE TAKEN TO HAVE ACQUIESCED IN THE REQUEST OF THE UNION FOR THE DEFERRING OF NEGOTIATIONS. WHILE IT IS NOT AN EMPLOYER'S RESPONSIBILITY TO PRESS BARGAINING ON A RECALCITRANT TRADE UNION IT WAS ITS OBLIGATION IN THE CIRCUMSTANCES OF THIS CASE TO ADVISE THE UNION THAT IT DID NOT ACCEDE TO THE UNION'S REQUEST FOR DELAY.

HAVING IN MIND ALL OF THE FOREGOING AND CONSIDERING ALSO
THE HASTE WITH WHICH THIS APPLICATION WAS BROUGHT UPON THE EXPIRY
OF SIXTY DAYS FROM THE GIVING OF THE NOTICE TO BARGAIN, IT IS OUR
OPINION THAT THIS IS NOT A CASE IN WHICH THE BARGAINING RIGHTS
OF THE RESPONDENT SHOULD BE TERMINATED OR A REPRESENTATION VOTE
ORDERED.

THE APPLICATION ACCORDINGLY IS DISMISSED."

### INDEXED ENDORSEMENT - PROSECUTION

10234-65-U: Local 508 of the United Association of Journeymen .D Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada (Applicant) v. The Foundation Company of Canada Limited and George Firth (Respondents). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT TRADE UNION HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS AND HAS ALLEGED IN PART AS FOLLOWS:

"THE RESPONDENTS DIRECTED AND PERMITTED THE HANDLING AND THE INSTALLATION OF UNIT HESTERS AT THE PROJECT UNDER THE SUPERVISION OF THE RESPONDENT THE FOUNDATION COMPANY OF CANADA LIMITED. THE EMPLOYER OF THE RESPONDENT FIRTH, AT SAULT STE. MARIE, IN THE PROVINCE OF ONTARIO IN NOVEMBER OF 1964 BY EMPLOYEES OF THE RESPONDENT THE FOUNDATION COMPANY OF CANADA LIMITED, MEMBERS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL Union 786, CONTRARY TO THE PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT THE FOUNDATION COMPANY OF CANADA LIMITED DATED THE 11TH DAY OF JUNE, 1963, AND PARTICULARLY CLAUSE XVI THEREOF, KNOWING THAT THE SAID WORK WAS IMPROPERLY AND WRONGFULLY ASSIGNED AND THE RESPONDENTS KNEW OR OUGHT TO HAVE KNOWN THAT SUCH IMPROPER ASSIGNMENT WOULD CAUSE THE MEMBERS OF LOCAL 508 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA TO ENGAGE IN AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 57, SUBSECTION (1) OF THE LABOUR RELATIONS ACT, R.S.O. 1960, CHAPTER 202."

THE APPLICANT ADDUCED EVIDENCE THAT THE APPLICANT AND ITS MEMBERS WERE BOUND BY A COLLECTIVE AGREEMENT WITH THE RESPONDENT COMPANY AT ALL MATERIAL TIMES. THE APPLICANT FURTHER TESTIFIED, THROUGH ITS WITNESSES, THAT THE MEMBERS OF THE APPLICANT HAD PREVIOUSLY ENGAGED IN THREE OTHER WORK STOPPAGES ON THE RESPONDENT'S PROJECT, AND THAT ALL STOPPAGES OCCURRED CONTRARY TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND PRIOR TO ANY GRIEVANCE BEING FILED PURSUANT TO THE TERMS OF THE COLLECTIVE AGREEMENT.

THE APPLICANT ALSO TENDERED EVIDENCE THAT AN APPLICATION WAS MADE TO THE JURISDICTIONAL DISPUTES COMMISSION FOR A RULING ON THE MATTERS IN DISPUTE AFTER THE OUTBREAK OF THE STRIKE IN

November, 1964 and that on March 8th, 1965, the Jurisdictional Disputes Commission issued an Interim Order awarding a major portion (but not all) of the work claimed by the applicant to the applicant. However, the applicant has not supplied any of its members to the respondent since that date.

IT WOULD ALSO APPEAR FROM THE EVIDENCE THAT THE RESPONDENT COMPANY HAD TO PAY ABOUT 38¢ PER HOUR MORE TO THE IRONWORKERS, TO WHOM THE WORK IN QUESTION WAS ASSIGNED, THAN THEY WOULD HAVE HAD TO PAY TO MEM ERS OF THE APPLICANT UNION.

THERE IS NO EVIDENCE THAT THE RESPONDENT COMPANY IN ANY WAY BENEFITED FROM THE FACT THAT IT WAS IN ERROR IN MAKING THE ASSIGNMENT OF WORK.

THERE WAS ALSO NO EVIDENCE FROM WHICH THE BOARD COULD POSSIBLY INFER THAT THE RESPONDENT COMPANY ASSIGNED THE WORK IN THE MANNER IN WHICH IT DID FOR THE PURPOSE OF CAUSING THE MEMBERS OF THE APPLICANT TO ENGAGE IN THE UNLAWFUL STRIKE.

THE APPLICANT ARGUED THAT BECAUSE OF THE PREVIOUS HISTORY OF UNLAWFUL WORK STOPPAGES ENGAGED IN BY THE MEMBERS OF THE APPLICANT THE RESPONDENT KNEW OR SHOULD HAVE KNOWN THAT ANY WORK ASSIGNMENT WHICH WAS MADE TO THE DETRIMENT OF THE APPLICANT'S MEMBERS WOULD, AS A PROBABLE AND REASONABLE CONSEQUENCE THEREOF, CAUSE THE APPLICANT'S MEMBERS TO ENGAGE IN AN UNLAWFUL STRIKE AND THAT SUCH ACTIVITY ON THE PART OF THE RESPONDENTS WAS THEREFORE CONTRARY TO THE PROVISIONS OF SECTION 57(1) OF THE ACT.

ONE OF THE QUESTIONS WHICH THE BOARD MUST CONSIDER IN DETERMINING THIS MATTER IS WHETHER, IN THE CIRCUMSTANCES OF THIS CASE, THERE WAS ANOTHER REMEDY AVAILABLE TO THE APPLICANT AND ITS MEMBERS. THE COLLECTIVE AGREEMENT BINDING ON THEM PROVIDED THAT "THERE SHALL BE NO WORK STOPPAGE BECAUSE OF JURISDICTIONAL DISPUTES," AND IT FURTHER PROVIDED FOR A GRIEVANCE PROCEDURE IN THE EVENT OF DISPUTES. IT THEREFORE APPEARS THAT THE PARTIES TO THE COLLECTIVE AGREEMENT NOT ONLY ANTICIPATED THAT THERE MAY BE JURISDICTIONAL DISPUTES BUT ALSO PROVIDED FOR A METHOD OF SETTLEMENT. THE PARTIES TO THE COLLECTIVE AGREEMENT FORESAW THE POSSIBILITY OF UNLAWFUL STRIKES BY THE PERSONS BOUND BY THE COLLECTIVE AGREEMENT AND ACCORDINGLY AGREED THAT UNLAWFUL STRIKES SHOULD NOT TAKE PLACE BECAUSE OF JURISDICTIONAL DISPUTES. IN ADDITION, THE LABOUR RELATIONS ACT PROVIDES FOR A METHOD OF SETTLING JURISDICTIONAL DISPUTES.

None of the remedies available to the applicant or its members were sought prior to the outbreak of any of the unlawful strikes. The evidence of previous history of unlawful strikes engaged in by the applicant's members can only serve to prove that their past conduct was irresponsible in the circumstances.

WHILE THE IRRESPONSIBLE AND UNLAWFUL ACTIONS OF THE

MEMBERS OF THE APPLICANT IN THE PAST MIGHT LEAD ONE TO ANTICIPATE THAT THEY MIGHT CONTINUE IN THE FUTURE, SUCH ACTIONS CANNOT BE RELIED UPON BY THE APPLICANT OR ITS MEMBERS TO SUPPORT AN APPLICATION FOR CONSENT TO PROSECUTE. IN THE CIRCUMSTANCES OF THIS CASE THE UNLAWFUL ACTIVITY OF THE RESPONDENT'S MEMBERS, WHILE A "PROBABLE" CONSEQUENCE OF THE RESPONDENT'S ACTIONS CANNOT BE DESCRIBED AS A "REASONABLE" CONSEQUENCE WITHIN THE MEANING OF SECTION 57(1) OF THE ACT. ACTIONS CANNOT BE IRRESPONSIBLE AND AT THE SAME TIME BE REASONABLE.

The Board accordingly finds that the activities of the Respondents which have been complained of were not such as are prohibited by section 57(1) of the Act.

THIS APPLICATION IS THEREFORE DISMISSED."

### INDEXED ENDORSEMENT - SECTION 47A

10163-64-M: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. GIBSCO TRANSPORT LTD. (RESPONDENT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (INTERVENER) v. JOHN GRANT HAULAGE LIMITED (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for relief pursuant to section 47A of The Labour Relations Act. The applicant contends that there has been a sale of business within the meaning of that section. The determination of the question whether there has been such a sale is a necessary preliminary to the determination of any other question which may arise under section 47A.

ON FEBRUARY 18th, 1964, THE APPLICANT WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR ALL EMPLOYEES OF JOHN GRANT HAULAGE LIMITED (HEREINAFTER DESCRIBED AS GRANT) AT CLARKSON, WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO, BUT IT IS NOT QUESTIONED THAT THE APPLICANT RETAINS BARGAINING RIGHTS WITH RESPECT TO ANY EMPLOYEES OF GRANT WITHIN THE BARGAINING UNIT DEFINED IN THE BOARD'S CERTIFICATE. GRANT IS ENGAGED IN THE HAULAGE AND TRANSPORT OF VARIOUS GOODS AND MATERIALS.

ON FEBRUARY 1ST, 1965, GRANT ENTERED INTO AN AGREEMENT WITH GIBSCO TRANSPORT LTD. (HEREINAFTER DESCRIBED AS GIBSCO). BY THAT AGREEMENT GIBSCO UNDERTOOK TO PERFORM THE FOLLOWING SERVICES FOR GRANT: (1) TO MAINTAIN AND SERVICE ALL VEHICLES

OWNED BY GRANT; (2) TO SUPPLY DRIVERS FOR AND BE RESPONSIBLE FOR THE DISPATCHING OF THE VEHICLES; (3) TO BE RESPONSIBLE FOR PAYMENT OF THE DAY TO DAY OPERATING EXPENSES NORMALLY PAYABLE BY GRANT. IN RETURN FOR THESE SERVICES GIBSCO WAS TO RECEIVE AN AGREED PERCENTAGE OF THE GROSS REVENUE OF GRANT (A CERTAIN PORTION BEING EXPRESSED AS ON ACCOUNT OF OPERATING COSTS; A FURTHER PORTION REPRESENTING PAYMENT FOR THE MANAGEMENT SERVICES PROVIDED BY GIBSCO). THIS AGREEMENT IS TO RUN FOR A TERM OF ONE YEAR, BUT IS SUBJECT TO TERMINATION BY EITHER PARTY ON THIRTY DAYS! WRITTEN NOTICE. IT SHOULD BE NOTED THAT, BY THIS AGREEMENE', GRANT HAS PARTED WITH NONE OF ITS PROPERTY, BUT THAT IT REMAINS FREE TO DO SO AT WILL. IT SHOULD FURTHER BE NOTED THAT THE VOLUME AND SUBSTANCE OF GRANT'S BUSINESS REMAINS ENTIRELY IN GRANT'S HANDS, INASMUCH AS GRANT CONTINUES TO OPERATE ITS BUSINESS, AND OBTAIN ORDERS FROM ITS CUSTOMERS.

FOLLOWING THE COMPLETION OF THIS AGREEMENT GIBSCO UNDERTOOK THE MAINTENANCE, DISPATCHING AND OPERATION OF GRANT'S TRUCKS WHICH IT USED FOR THE CONDUCT OF GRANT'S BUSINESS. THE TRUCKS REMAIN THE PROPERTY OF GRANT AND ARE DISPATCHED IN ACCORDANCE WITH GENERAL INSTRUCTIONS GIVEN BY GRANT.

ON FEBRUARY 5TH, 1965, ALL OF GRANT'S EMPLOYEES IN THE BARGAINING UNIT WERE DISCHARGED AND GRANT CEASED TO USE ITS OWN EMPLOYEES IN THE OPERATION OF ITS VEHICLES. ON THE SAME DATE, THE SAME EMPLOYEES WERE OFFERED EMPLOYMENT WITH GIBSCO AND MANY OF THEM ACCEPTED. THESE PERSONS, NOW EMPLOYEES OF GIBSCO, HAVE BEEN INTERMINGLED WITH GIBSCO'S OTHER EMPLOYEES AND ARE ASSIGNED TO OPERATE BOTH GRANT'S AND GIBSCO'S VEHICLES FROM TIME TO TIME.

IT IS THE ABOVE DESCRIBED AGREEMENT WITH THE ATTENDANT CHANGES IN OPERATIONS WHICH THE APPLICANT CONTENDS CONSTITUTES A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A. BY THAT SECTION "SALE" IS DEFINED AS INCLUDING "LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION". IN OUR VIEW, THE EVIDENCE DISCLOSES NO LEASE, TRANSFER OR ANY OTHER MANNER OF DISPOSITION OF GRANT'S BUSINESS OR OF ANY PART OF IT. THE TRUCKS WITH WHICH GRANT'S BUSINESS IS CARRIED ON REMAIN THE PROPERTY OF GRANT AND THE HAULAGE FOR WHICH THEY ARE USED IS ON GRANT'S ACCOUNT. GRANT HAS NOT DISPOSED OF ANY OF ITS BUSINESS OR OF ITS ASSETS. BUT HAS RATHER CHANGED ITS METHOD OF CARRYING ON ITS BUSINESS AND ITS METHOD OF UTILIZING THESE ASSETS. PUT ANOTHER WAY. GRANT HAS ENTRUSTED TO AN AGENT THE PERFORMANCE OF CERTAIN TASKS WHICH GRANT HAD FORMERLY PERFORMED BY ITS OWN EMPLOYEES. THESE TASKS CONTINUE TO BE PERFORMED AS A PART OF GRANT'S "BUSINESS", ALTHOUGH THEY ARE NOW PERFORMED BY EMPLOYEES OF GRANT'S AGENT. IN OUR VIEW, THE PROVISIONS OF SECTION 47A HAVE NO APPLICATION IN THE CIRCUMSTANCES OF THIS CASE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

## INDEXED ENDORSEMENT - SECTION 66(6)

10235-65-M: Wood, WIRE AND METAL LATHERS INTERNATIONAL UNION LOCAL 423 (COMPLAINANT) v. GERARD AND GERARD Co. LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application pursuant to section 66(6) of The Labour Relations act for review of an interim order of a Jurisdictional Disputes Commission.

The interim order was made on the 8th day of March, 1965.

THIS APPLICATION WAS MADE ON THE 7TH DAY OF APRIL. 1965.

SECTION 66(6) OF THE LABOUR RELATIONS ACT PROVIDES, INTER ALIA, THAT "ANY PERSON, EMPLOYERS" ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AFFECTED BY AN INTERIM ORDER OR A DIRECTION OF A COMMISSION MAY APPLY TO THE BOARD, WITHIN SEVEN DAYS AFTER THE RELEASE OF THE INTERIM ORDER OR THE DIRECTION..." FOR REVIEW OF THE INTERIM ORDER OR THE DIRECTION.

Since more than seven days have elapsed between the release of the interim order and the date of the making of this application, this application is untimely.

THE APPLICATION IS THEREFORE DISMISSED."

# INDEXED ENDORSEMENT - REQUEST FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10034-64-R: Local Union 120, of the International Brotherhood of Electrical Workers, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Wakefield Lighting Limited (Respondent).

.THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT, BY ITS LETTER DATED MAY 3RD, 1965, HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED APRIL 13TH, 1965, IN THIS MATTER.

IT IS A WELL ESTABLISHED PRACTICE OF THE BOARD IN
DETERMINING THE APPROPRIATENESS OF BARGAINING UNITS OF PERSONS
ENGAGED IN PRODUCTION AS DISTINGUISHED FROM THE OFFICE BARGAINING
UNITS, TO INCLUDE IN THE PRODUCTION UNITS EMPLOYEES IN JOB
CLASSIFICATIONS SUCH AS PRODUCTION SCHEDULERS, EXPEDITERS AND
MATERIAL CONTROL CLERKS. THESE CLASSIFICATIONS MAY BE INCLUDED
IN THE GENERAL DESCRIPTION OF "PLANT CLERICAL STAFF".

IT IS THE BOARD'S PRACTICE TO INCLUDE PLANT CLERICAL STAFF WITH THE PRODUCTION UNIT BECAUSE OF SUCH FACTORS AS COMMON SUPERVISION, THE FACT THAT THEY DIRECTLY SERVICE THE PRODUCTION UNIT, THEY ARE COMMONLY ASSOCIATED WITH THE PRODUCTION UNIT AND IN GENERAL THEIR COMMUNITY OF INTEREST IS WITH THAT UNIT. THIS FUNCTIONAL COHERENCE AND INTERDEPENDENCE IS THE REASON FOR INCLUDING SUCH CLASSIFICATIONS IN THE UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE IN THIS MATTER.

Since the Board considered all the matters raised in the Letter from the respondent prior to reaching its decision dated April 13th, 1965, the Board does not consider it advisable to reconsider, vary or revoke its decision dated April 13th, 1965, in this matter.

THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED."

### ADDENDUM

THE FOLLOWING ENDORSEMENT WAS INADVERTENTLY OMITTED FROM THE JULY, 1962 MONTHLY REPORT:

2815-61-C: United Brotherhood of Carpenters and Joiners of America, Toronto and District Council of Carpenters and Millmen (Applicant) v. Steed and Evans Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT REQUESTS THAT CONCILIATION SERVICES BE MADE AVAILABLE TO THE PARTIES WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED JULY 20TH, 1960. FOR THE PURPOSES OF THIS APPLICATION THE RELEVANT TERMS OF THE AGREEMENT ARE AS FOLLOWS:

### ARTICLE 1 - TERMS OF AGREEMENT

This Agreement shall be effective and operative from the first day of November, 1958 and shall remain in full force and effect until the 30th day of April, 1961.

#### ARTICLE 2 - CONDITIONS OF AMENDMENT

SHOULD THE UNION OR THE STEED & EVANS
COMPANY DESIRE TO CHANGE, ADD TO, AMEND OR
TERMINATE THIS AGREEMENT, WRITTEN NOTICE
TO THAT EFFECT WILL BE GIVEN ON OR BEFORE
THE FIRST DAY OF JANUARY PRIOR TO THE
TERMINATION OF THIS AGREEMENT. ON RECEIPT
OF SUCH NOTICE THE PARTIES TO THE AGREEMENT
SHALL CONVENE A MEETING WITHIN THIRTY DAYS
AND BARGAIN IN GOOD FAITH TO ENDEAVOUR TO
REACH AN AGREEMENT. IF NO SUCH WRITTEN
NOTICE IS GIVEN THIS AGREEMENT SHALL BE
AUTOMATICALLY RENEWED AND REMAIN IN FORCE
FROM YEAR TO YEAR FROM ITS EXPIRATION DATE ....

The applicant gave written notice by registered mail on December 28th, 1961 and this notice was received by the respondent on January 2nd, 1962. The respondent submits that the application is untimely since it had not received notice from the applicant on or before the first day of January, 1962.

WHERE A COLLECTIVE AGREEMENT PROVIDES FOR ITS RENEWAL UPON FAILURE OF THE PARTIES TO GIVE WRITTEN NOTICE WITHIN A STIPULATED PERIOD, THE APPLICABLE PRINCIPLES ARE SET OUT IN THE WALFOODS CASE, (1958) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, 916,113, C.L.S. 76-604. IN THAT CASE THE BOARD HELD THAT A NOTICE THAT FAILED TO SATISFY THE REQUIREMENTS OF SUBSECTION 2 OF SECTION 40 (FORMERLY SECTION 38) OF THE LABOUR RELATIONS ACT BUT COMPLIED WITH THE REQUIREMENTS OF SUBSECTION 1 OF SECTION 40 WAS EFFECTIVE NOTICE. ACCORDINGLY, IN THE PRESENT CASE, THE APPLICANT COULD HAVE GIVEN FURTHER NOTICE OF ITS DESIRE TO BARGAIN DURING THE TWO-MONTH PERIOD BEFORE THE AGREEMENT CEASED TO OPERATE AND SUCH NOTICE WOULD HAVE BEEN EFFECTIVE NOTICE UNDER SUBSECTION 1 OF SECTION 40 OF THE ACT. IN OUR VIEW A NOTICE THAT HAS BEEN GIVEN PRIOR TO THE COMMENCEMENT OF THE TWO-MONTH PERIOD BECOMES AN EFFECTIVE NOTICE AS SOOM AS THAT TWO-MONTH PERIOD COMMENCES TO RUN. THIS IS PARTICULARLY SO WHERE, AS HERE, THE EARLY NOTICE HAS BEEN FOLLOWED UP BY AN APPLICATION FOR CONCILIATION SERVICES AND A HEARING BEFORE THE BOARD IN RESPECT OF THAT APPLICATION. IN THESE CIRCUMSTANCES IT IS UNNECESSARY FOR US TO DECIDE WHETHER THE NOTICE IN THIS MATTER ALSO COMPLIED WITH THE REQUIREMENTS OF SUBSECTION 2 OF SECTION 40 OF THE ACT IN THAT IT WAS RECEIVED BY THE RESPONDENT ON JANUARY 2ND. THE DAY NEXT FOLLOWING THE STATUTORY HOLIDAY ON OR BEFORE WHICH THE NOTICE WAS TO BE GIVEN.

The Board directs the parties to meet, bargain in good faith, make every responsible effort to conclude a collective agreement and report their progress in this regard to the Board on or before the 24th day of July, 1962."

(Request for conciliation services was granted to the applicant on February 7th, 1963.)

# STATISTICAL TABLES FOR MAY 1965

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

TABLE 1

			NUMBER FILED	
		MAY 1965	lst Two Mths. o 1965-66	F FISCAL YR. 1964-65
1	CERTIFICATION	85	191	145
11.	DECLARATION TERMINATING BARGAINING RIGHTS	8	13	13
111	DECLARATION OF SUCCESSOR STATUS		2	1
1 V	DECLARATION THAT STRIKE UNLAWFUL	8	11	7
V	DECLARATION THAT LOCK- OUT UNLAWFUL	-	· •• ·	1
V 1	CONSENT TO PROSECUTE	. 6	11	9
VII	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	24	16
VIII	MISCELLANEOUS	6	16	1
	TOTAL	126	268	193

TABLE 11

# HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		Number	
	May 1965	1st Two Mths. o 1965-66	FISCAL YR. 1964-65
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	106		183

# TABLE III

# APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ON FARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

		Number Disposed Of		
		May 1965	1st Two Mths. 1965-66	of Fiscal YR. 1964-65
1	CERTIFICATION	93	183	144
11	DECLARATION TERMINATING BARGAINING RIGHTS	6	8	11
111	DECLARATION OF SUccessor Status	1	5 :	3
IV	DECLARATION THAT STRIKE UNLAWFUL	6	7	-
V	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	1
VI	Consent to Prosecute	10	12	6
VII	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	19	31
VIII	Miscellaneous	9	35	5
	TOTAL	135	269	201

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION

			UMBER OF APPLI			NUMBER OF EMPL	OYEES*
		MAY 1965	1st Two Mths. 1965-66	FISCAL YR. 1964-65	May 1965	1st Two MTHs. 1965-66	FISCAL YR. 1964-65
1	CERTIFICATION						
	GRANTED Dismissed Withdrawn	71 16 6	146 26 11	106 23 15	2138 1714 1033	4979 1955 1157	4119 2121 263
	TOTAL	93	183	144	4885	8091	6503
11	TERMINATION OF BARGAINING RIGHTS						
	GRANTED DISMISSED WITHDRAWN	1 4	1 6 1	6 4 1	12 125 30	12 151 30	124 96 64
	TOTAL	6	8	11	167	193	284

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY
AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN
THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR
CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR
APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

## TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			Number of Applications			
			MAY 1965	1st Two Mths. 1965-66	of Fiscal YR. 1964-65	
		_	170)	190)=00	1704=0)	
111	DECLARATION THAT STRIKE UNLAWFUL					
	GRANTED		_	- 1		
	DISMISSED		_	-	_	
	WITHDRAWN		6	7	-	
	Total		6	7	-	
IV	DECLARATION THAT LOCKOUT UNLAWFUL					
	GRANTED		_	-	-	
	DISMISSED		tent	-	-	
	WITHDRAWN	_	•	-	1	
	TOTAL		-	_	1 0	
V	CONSENT TO PROSECUTE					
	GRANTED		-	1	1	
	DISMISSED		2	2 9	1 4	
	WITHDRAWN		8	9	4	
	TOTAL		10	12	6	

#### TABLE V

# REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER OF VOT	ES
	May 1965	1st Two Mths. 1965-66	
CERTIFICATION AFTER VOTE*			
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	2 5 -	5 6	4 5 -
DISMISSED AFTER VOTE			
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	1 1 -	1 3 1	1 13 -
TOTAL	9	16	23

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

### TABLE VI

# REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	MAY	1st Two Mths.	OF FISCAL YR.
	1965	1965-66	1964-65
*RESPONDENT UNION SUCCESSFUL	_	_	_
RESPONDENT UNION UNSUCCESSFUL	1	1	3
	***************************************		
TOTAL	1	1	3

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN
THE APPLICANT IS A GROUP OF EMPLOYEES OR THE
EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.





# **ONTARIO LABOUR RELATIONS BOARD**



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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

### DURING JUNE 1965

### BARGAINING AGENTS CERTIFIED DURING JUNE

#### No VOTE CONDUCTED

10158-64-R: Local Union Number 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America. AFL-CIO-CLC (Applicant) v. Coca-Cola Ltd. (Respondent).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, CONFIDENTIAL SECRETARY TO THE BRANCH MANAGER, SPECIAL SALESMEN AND SPECIAL AFFAIRS REPRESENTATIVES."
(8 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT A NAMED PERSON IS EXCLUDED FROM THE BARGAINING UNIT.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Following the report of the examiner in this matter, dated April 26th, 1965, the respondent filed a statement of objections and desire to make representations, and the matter came on for further hearing on May 27th, 1965. Having considered the evidence contained in the examiner's report and the representations of the parties, the majority of the Board is of the opinion that Mrs. Dianne McCall, whose occupational classification is "clerk-stenographer" and who acts as confidential secretary to the office manager, should be included in the bargaining unit. In all the circumstances of this case, the majority is of the opinion that Mrs. McCall cannot be said to be employed in a confidential capacity in matters relating to labour relations within the meaning of section 1 (3) (b) of the Labour Relations Act."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

"I dissent as to the inclusion of Mrs. Dianne McCall in the bargaining unit.

WITH THE ISSUING OF THE BOARD'S CERTIFICATE BARGAINING WILL TAKE PLACE BETWEEN THE APPLICANT AND THE RESPONDENT IN WHICH THE OFFICE MANAGER WILL NECESSARILY BE AN ACTIVE PARTICIPANT. IT IS ALSO REASONABLE TO EXPECT THAT HE WILL PLAY A LEADING ROLE IN THE ADMINISTRATION OF THE COLLECTIVE AGREEMENT. FOR THESE REASONS HE WILL BE DEALING WITH CONFIDENTIAL MATTERS IN RESPECT OF LABOUR RELATIONS AND MRS. MCCALL, WHO HAS BEEN ACTING

AS HIS SECRETARY, WILL BE REQUIRED TO HAVE KNOWLEDGE OF THESE MATTERS. THEREFORE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT, I WOULD HAVE EXCLUDED HER FROM THE BARGAINING UNIT."

10211-65-R: LAUNDRY DRY CLEANING AND DYE HOUSE WORKERS INTERNATIONAL UNION,
LOCAL 351 (APPLICANT) v. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT)
v. International Union of Operating Engineers, Local 869 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ROUTEMEN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT." (44 EMPLOYEES IN THE UNIT).

10258-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America U.A.W. (Applicant) v. Bowltex Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

10272-65-R: Local Union 105 of the International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Applicant) v. Berlet Electronics Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 20TH, 1965, AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD DECLARED THAT 2 NAMED EMPLOYEES IN THE RESPONDENT'S ENGINEERING AND DRAFTING DEPARTMENT, ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF OFFICE STAFF.

10280-65-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TIMMINS HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT BUILDING SUPERINTENDENT, PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT, PROFESSIONAL TEACHING STAFF AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD FOUND THAT A NAMED EMPLOYEE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS INCLUDED IN THE BARGAINING UNIT.

10326-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO-CLC (Applicant) v. Westminster Hotel Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WESTMINSTER HOTEL IN TORONTO, SAVE AND EXCEPT EXECUTIVE CHEF, STEWARD, ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (131 EMPLOYEES IN THE UNIT).

10332-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. FRONTENAC FOOD SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

10358-65-R: UNITED SHOE WORKERS OF AMERICA (APPLICANT) v. SAVAGE SHOES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT #1 AND #2 AT PRESTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, INDUSTRIAL NURSE, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (372 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10382-65-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION LOCAL 756, A.F. of L., C.I.O., C.L.C. (APPLICANT) v. HOMER INVESTMENTS (RESPONDENT).

UNIT: "ALL BARTENDERS AND WAITERS IN THE EMPLOY OF THE RESPONDENT AT ITS HOTEL RAINBOW INN AT St. CATHARINES." (4 EMPLOYEES IN THE UNIT).

10390-65-R: Sheet Metal Workers' International Association, Local Union 269 (Applicant) v. Quinte Machine & Repair Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

10391-65-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141, Warehousemen and Miscellaneous Drivers (Applicant) v. The Marra's Bread Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SPECIAL REPRESENTATIVES AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN ITS ENDORSEMENT DATED JUNE 7TH, 1965, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT IN WHICH VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE ASSOCIATION OF DRIVER SALESMEN, WAREHOUSEMEN AND OVER-THE-ROAD DRIVERS OF MARRA'S BREAD LIMITED. SINCE THAT ENDORSEMENT WAS ISSUED, THE BOARD HAS BEEN ADVISED BY LETTER DATED JUNE 10TH, 1965, OVER THE SIGNATURE OF THE PRESIDENT OF THE ASSOCIATION, THAT THE ASSOCIATION NO LONGER CLAIMED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT AND DID NOT WIGH TO PARTICIPATE IN A VOTE.

HAVING IN MIND THESE CIRCUMSTANCES AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD REVOKES ITS DIRECTION THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER."

10392-65-R: General Truck Drivers Local 879, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Peter Bawtinheimer Contracting (Respondent).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (9 EMPLOYEES IN THE UNIT)

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10410-65-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS
(APPLICANT) v. LOCAL CARTAGE COMPAMY (RESPONDENT) v. INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
MISCELLANEOUS DRIVERS (INTERVENER).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The intervener was certified as bargaining agent of employees in the bargaining unit in May, 1961. The Minister advised the intervener that he did not consider it advisable to appoint a Conciliation Board in August, 1961. The intervener advised the Board at the hearing in this matter that it had not been successful in negotiating a collective agreement with the respondent and that the matter had "Laid dormant" since August, 1961. It would appear that the respondent was approached by the intervener in November, 1963, however, no bargaining took place and there has been no attempt to bargain since November 1963.

THE BOARD FURTHER FINDS THAT THE EMPLOYEES IN THE BARGAINING UNIT HAVE NOT BEEN ACTIVELY REPRESENTED BY THE INTERVENER, THAT THERE HAS BEEN NO UNION STEWARD APPOINTED BY THE INTERVENER AND THE INTERVENER HAS FAILED TO MAINTAIN ANY CONNECTION WITH THE EMPLOYEES IN THE BARGAINING UNIT SINCE AUGUST, 1961.

IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE INTERVENER HAS ABANDONED ITS BARGAINING RIGHTS FOR THE EMPLOYEES IN THE BARGAINING UNIT AND THE BOARD ACCORDINGLY DECLARES THAT THE INTERVENER NO LONGER REPRESENTS THE EMPLOYEES OF DOAL CARTAGE COMPANY AT ETROPOLITAN TORONTO, FOR WHOM IT HAS HERETOFORE MEEN THE BARGAINING AGENT."

10414-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. DAAL SPECIALITIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(59 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10416-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Daal Plastics Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10417-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE MARRA'S BREAD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SPECIAL REPRESENTATIVES AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"In its endorsement dated June 9th, 1965, the Board directed that a representation vote be taken among the employees of the respondent in the bargaining unit in which voters will be given a choice between the applicant and The Association of Driver Salesmen, Ware-housemen and Over-The-Road Drivers of Marra's Bread Limited. Since that endorsement was issued, the Board has been advised by letter dated June 11th, 1965, over the signatures of representatives of the Association, that the Association no longer claimed to represent the Employees of the respondent and did not wish to participate in a vote.

HAVING IN MIND THESE CIRCUMSTANCES AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD REVOKES ITS DIRECTION THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER."

10422-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. GENERAL MOTORS TRIM LIMITED (RESPONDENT).

<u>Unit</u>: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS POWER HOUSE AT WINDSOR, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

10424-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Springview Apartments Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF MCNAB, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 214)

10425-65-R: Christian Labour Association of Canada (Applicant) v. Kenlen Manufacturing Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

10427-65-R: Canadian Union of Public Employees (Applicant) v. Linhaven Management Committee, representaing the Corporation of the County of Lincoln, and the Corporation of the City of St. Catharines (Respondent).

UNIT: "ALL PERSONS REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK AT ITS LINHAVEN HOME FOR THE AGED AT ST. CATHARINES, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, OFFICE STAFF, REGISTERED NURSE, CHIEF ENGINEER AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (16 EMPLOYEES IN THE UNIT).

10431-65-R: POCKETBOOK WORKERS UNION LOCAL 9 OF THE INTERNATIONAL LEATHERGOODS, PLASTIC AND NOVELTY WORKERS UNION (APPLICANT) v. MORBERN INDUSTRIES LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

10435-65-R: INTERNATIONAL LEATHER GOODS, PLASTICS AND NOVELTY WORKERS' UNION, Local No. 8 (Applicant) v. Opera Belt Co. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

10436-65-R: SUDBURY MINE MILL AND SMELTER WORKERS UNION LOCAL 598 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) v. THE WABI IRON WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (30 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The United Steelworkers of America was certified as bargaining agent for the employees in the bargaining unit in August, 1961. While the United Steelworkers of America was served with notice of this application it did not intervene nor did it appear at the hearing in this matter. Although conciliation services were made available to the respondent and the United Steelworkers of America and the conciliation proceedings were completed some time in the Early part of 1962, no collective agreement was entered into between the United Steelworkers of America and the respondent. It would appear from the evidence that the United Steelworkers of America have not sought to

BARGAIN WITH THE RESPONDENT ON BEHALF OF THE EMPLOYEES IN THE BARGAINING UNIT SINCE CONCILIATION SERVICES WERE COMPLETED. IT WOULD APPEAR FROM THE REPRESENTATIONS OF THE RESPONDENT THAT THERE HAD BEEN NO CONTACT BETWEEN THE UNITED STEELWORKERS OF AMERICA AND THE RESPONDENT FOR APPROXMIATELY 3 YEARS.

IN THE CIRCUMSTANCES SET OUT ABOVE, THE BOARD FINDS
THAT THE UNITED STEELWORKERS OF AMERICA HAS ABANDONED ITS
BARGAINING RIGHTS AND THE BOARD ACCORDINGLY DECLARES THAT THE
UNITED STEELWORKERS OF AMERICA NO LONGER REPRESENTS THE EMPLOYEES OF THE WABI IRON WORKS LIMITED AT SUDBURY, FOR WHOM IT HAS
HERETOFORE BEEN THE BARGAINING AGENT."

10439-65-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197 (APPLICANT) v. PAUL SENSON (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT HIS PICCADILLY HOUSE AT HAMILTON, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

10440-65-R: General Truck Drivers, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Clemens & Miller Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

10441-65-R: General Truck Drivers' Union, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Charles Harris and Sons Transport Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

10442-64-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Paul D'Aoust Construction (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF MCNAB, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (14 EMPLOYEES IN THE UNIT).

10443-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Goodenough Electric Company (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET;

ON THE NORTH BY THE SOUTHERYLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

10445-65-R: International Association of Bridge, Structural and Ornamental Tronworkers, Local Union 721 (Applicant) v. The Mitchell Construction Company (Canada) (Respondent).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORGE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE ORAL AND WRITTEN REPRESENTATIONS OF THE PARTIES).

10446-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA (APPLICANT) v. SCOTT-JACKSON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (66 EMPLOYEES IN THE UNIT).

10453-65-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DUFFERIN MATERIAL & CONSTRUCTION LTD. (RESPONDENT) v. LOCAL 793, INTERNATIONAL UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND DELIVERY OF READY MIXED CONCRETE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND THOSE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT EXPRESSED TO BE MADE BETWEEN THE HAGERSVILLE ASPHALT PAVING COMPANY (A TRADE NAME OF THE RESPONDENT) AND A COUNCIL OF TRADE UNIONS ACTING AS THE REPRESENTATIVE AND AGENT OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, GENERAL TRUCK DRIVERS! UNION, LOCAL 879 AND INTERNATIONAL HOD CARRIER'S BUILDING AND COMMON LABOURERS! UNION OF AMERICA, LOCAL 837." (5 EMPLOYEES IN THE UNIT).

10457-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Canadian Stebbins Engineering & Manufacturing Co. Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

 $\frac{10458-65-R}{(Respondent)}$ . Retail Clerks Union Local 409 (Applicant) v. Chapples Stores Limited

THE BOARD FOUND THAT TWO UNITS WERE APPROPRIATE AS FOLLOWS:-

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT RED ROCK, SAVE AND EXCEPT BRANCH STORE MANAGERS, FOOD DEPARTMENT MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

For purposes of clarity the Board declared that a named employee was included in the above bargaining unit.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT RED ROCK REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

10463-65-R: Sheet Metal Workers' International Association, Local 269, A.F.L.-C.I.O. (Applicant) v. Dominion Acoustic Tile Ltd. (Respondent).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL WORKERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

10466-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Farquhar Construction Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10468-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. York Electric (Respondent).

Unit: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(7 EMPLOYEES IN THE UNIT).

10470-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dilcrane Equipment Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10471-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, (APPLICANT) v. WATCHLER MFG CO LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE DISTRICT OF KENORA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"AT THE HEARING DIRECTED BY THE BOARD IN THIS MATTER, THE APPLICANT URGED THE BOARD TO RECONSIDER CERTAIN AREAS WHICH THE BOARD IN THE PAST HAS FOUND TO BE APPROPRIATE. More specifically, THE APPLICANT SUBMITTED, IN A WELL-PRESENTED ARGUMENT, THAT THE DISTRICT OF RAINY RIVER, WHICH PRESENTLY CONSTITUTES BOARD AREA No. 23, SHOULD BE DIVIDED BY A LINE RUNNING NORTH AND SOUTH THROUGH GLENORCHY AND THAT PORTION OF THE DISTRICT EAST OF THE SAID LINE WOULD CONSTITUTE ONE AREA, AND THAT PORTION OF THE DISTRICT WEST OF THE LINE, ALONG WITH THE DISTRICT OF KENORA (PRESENT BOARD AREA NO. 24) WOULD CONSTITUTE A SECOND AREA.

THE PRESENT BOARD AREAS No. 23 AND NO. 24 EVOLVED OUT OF COLLECTIVE BARGAINING PRACTICES ESTABLISHED IN THE PAST BY, AMONG OTHERS, THE PRESENT APPLICANT. IT NOW APPEARS THAT BARGAINING PATTERNS, AT LEAST FOR THE APPLICANT UNION, CONTRACTORS IN THE AREA AND, INDEED, NON-RESIDENT CONTRACTORS COMING INTO THE AREA HAVE CHANGED. CURRENT COLLECTIVE AGREEMENTS AMONG THESE PARTIES FALL IN LINE WITH THE CHANGES SUGGESTED BY THE APPLICANT.

Unfortunately in this case we have not had the benefit of representations from other trade unions or employers who might be affected by such a change. In these circumstances, we do not feel justified in departing from our well established policies. We intend, however, when a suitable case arises, to go into the matter more fully and to that end will circulate this decision by way of advance notice to trade unions and employers in the areas."

10475-65-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 188, N.C.C.L. (APPLICANT) v. STARK TRUCK SERVICE (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

10478-65-R: Operative Plasterers and Cement Masons International Association of the United States and Canada (Applicant) v. Bravo Cement Contracting Ltd. (Respondent).

Unit: "ALL CEMENT MASONS AND CEMENT MASONS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(6 EMPLOYEES IN THE UNIT).

10479-65-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION NO. 124 (APPLICANT) v. IDEAL LATHING, PLASTERING & DRY WALL REGID (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10480-65-R: Local Union 353, International Brotherhood of Electrical Workers (APPLICANT) v. Perry Electric (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10481-65-R: Building Service Employees International Union, Local No. 204, AFL-CIO-CLC (Applicant) v. Orillia Soldiers Memorial Hospital (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (130 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD FURTHER DECLARES THAT CERTIFIED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT."

10483-65-R: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351, (Applicant) v. Parisian Fabric Care Services Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (76 EMPLOYEES IN THE UNIT).

10486-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, Local # 1036 (Applicant) v. Meldon Construction Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT SAINTE MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT HAS REQUESTED A HEARING IN THIS MATTER. ALTHOUGH GIVEN AN OPPORTUNITY TO MAKE FURTHER REPRESENTATIONS IN SUPPORT OF ITS REQUEST IT HAS NOT DONE SO. IN SO FAR AS THE FIRST GROUND IS CONCERNED (NAMELY, THAT THE APPLICANT DOES NOT HAVE THE REQUIRED NUMBER OF MEMBERS IN THE UNIT GLAPMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING) THIS MATTER HAS BEEN DEALT WITH ON A NUMBER OF PREVIOUS OCCASIONS. SEE THE DORAL HOLDINGS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1964, p. 259.

THE OTHER THREE GROUNDS RELIED ON DEAL ESSENTIALLY WITH THE SAME POINT, THAT IS, THE JOB AFFECTED BY THIS APPLICATION WILL BE COMPLETED IN THE NEAR FUTURE AND THE RESPONDENT HAS NOT CONTRACTED FOR ANY FURTHER WORK IN THE AREA. IT HAS LONG BEEN THE ESTABLISHED POLICY OF THE BOARD TO ISSUE A CERTIFICATE EVEN THOUGH THE JOB HAS IN FACT CEASED AT THE TIME THE CERTIFICATE ISSUES. ASSUMING THAT ALL THE MATTERS STATED IN PARAGRAPHS 2, 3 AND 4 OF PARAGRAPH 14 (3) OF THE REPLY ARE TRUE, NO REASONS ARE ADVANCED BY THE RESPONDENT WHICH IN OUR VIEW WOULD CAUSE US TO DEPART FROM THIS POLICY.

IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE PROVISIONS OF SECTION 75 (9a) OF THE LABOUR RELATIONS ACT, THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING IN THIS CASE."

10489-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local No. 506 (Applicant) v. Sandrin Precast Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT WESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (49 EMPLOYEES IN THE UNIT).

10491-65-R: International Hod Carriers Building and Common Labourers Union, Local # 493 (Applicant) v. Farquhar Construction Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(4 EMPLOYEES IN THE UNIT).

10494-65-R: International Hod Carriers Building and Common Labourers Union, Local 607 (Applicant) v. Canadian Stebbins Engineering & Manufacturing Co. Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (36 EMPLOYEES IN THE UNIT).

10497-65-R: SUDBURY GENERAL WORKERS! UNION LOCAL 101, CANADIAN LABOUR CONGRESS (APPLICANT) v. NORTHERN FOODS MARTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT SUDBURY, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, BAKERY DEPARTMENT MANAGER, PRODUCT DEPARTMENT MANAGER, MEAT DEPARTMENT MANAGER, SUNDRY MANAGER AND OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10499-65-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, Local 1059 (Applicant) v. Ball Brothers Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND THOSE PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED OCTOBER 30TH, 1959." (5 EMPLOYEES IN THE UNIT).

(AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES).

10500-65-R: International Hod Carriers Building and Common Labourers Union, Local 1081 (Applicant) v. W. A. McDougall Limited (General Contractors) (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF NORMANBY IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS PROPOSED THE COUNTY OF GREY, THE BOARD IS NOT PREPARED AT THIS TIME TO ESTABLISH A NEW AREA CONSISTING OF THE COUNTY OF GREY."

10511-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Gitto Electric (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10512-65-R: International Hod Carriers' Building & Common Labourers' Union of America, Local 1059 (Applicant) v. Alcan-Colony Contracting (Respondent).

Unit: "ALL construction Labourers in the EMPLOY of the RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

10518-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) v. CANADIAN CUSTODIS CHIMNEY Co. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10520-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. PERFECTION AUTOMOTIVE PRODUCTS (WINDSOR) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

10529-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. North York Electrical Contractors Ltd. (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITED OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

10530-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, Local 607 (APPLICANT) v. CANADIAN CUSTODIS CHIMNEY CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10531-65-R: International Hod Carriers Building and Common Labourers Union, of America, Local 597 (Applicant) v. Mal Nicholson Ltd. (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT,

UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(9 EMPLOYEES IN THE UNIT).

 $\frac{10534-65-R}{v_{\circ}}$ : International Union of Operating Engineers, Local 793 (Applicant)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, TOWER-HOISTS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10544-65-R: THE BRICKLAYERS' AND MASONS' UNION LOCAL No. 1 (APPLICANT) v. WILLIAM FILSINGER (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE BOARD IN EARLIER DECISIONS GRANTED THE AREA REQUESTED BY THE APPLICANT IN THIS CASE, IN VIEW OF THE UNSETTLED PATTERN OF COLLECTIVE BARGAINING FOR THE HAMILTON AREA WE ARE NOT PREPARED AT THIS TIME TO DEPART FROM THE MINIMUM AND INTERIM AREA WHICH WE HAVE GRANTED IN RECENT CASES."

10545-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Duern Electric Service (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(4 EMPLOYEES IN THE UNIT).

10553-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) v. P.T.C. CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND

AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(5 EMPLOYEES IN THE UNIT).

### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10183-64-R: Wood, WIRE & METAL LATHER'S INTERNATIONAL UNION, LOCAL 97 (APPLICANT) v. E & M LATHING (RESPONDENT).

Unit: "ALL Lathers and Lathers! Apprentices in the employ of the respondent within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

Number of names on voters' List

Number of Ballots Cast

Number of Ballots Marked in

Favour of Applicant

Number of Ballots Marked

Against Applicant

O

(SEE INDEXED ENDORSEMENT PAGE 209 )

10222-65-R: Canadian Union of Operating Engineers (Applicant) v. Moore Business Forms Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS AT THE POWER PLANT OF THE RESPONDENT AT TORONTO SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

Number of Names on Revised

VOTERS\* LIST

Number of Ballots Cast

Number of Ballots Marked in

FAVOUR OF APPLICANT

S

Number of Ballots Marked in

FAVOUR OF INTERVENER

O

10376-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL:CIO:CLC (APPLICANT) v. DESIGNED PRECISION CASTING LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (32 EMPLOYEES IN THE UNIT).

Number of names on revised

voters' List 32

Number of Ballots Cast 32

Number of Ballots segregated and not counted 1

Number of Ballots Marked in Favour of Applicant 15

Number of Ballots Marked 4

AGAINST APPLICANT 12

## CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

9935-64-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND MANAGERS AND PERSONS ABOVE THE RANK OF SUPERVISOR AND MANAGER." (180 EMPLOYEES IN THE UNIT).

The Board noted the agreement of the parties that two named persons exercised managerial functions within the meaning of section 1(3)(B) of the Act and are not included in the bargaining unit; five named persons were employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(B) of the Act and are not included in the bargaining unit; one named person was not employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(B) of the Act and is included in the bargaining unit.

For purposes of clarity the Board declared that six named persons were not employed as security guards and are included in the bargaining unit; twenty-five named persons did not exercise managerial functions within the meaning of section 1(3)(b) of the Act and are included in the bargaining unit; five named persons were not employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Act and are included in the bargaining unit; two named persons were employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Act and are not included in the bargaining unit.

Board Member H. F. Irwin dissented to the inclusion of seven named persons in the bargaining unit. Finding that they exercised managerial functions within the meaning of section  $1(3)(\mathsf{B})$  of the Act, he would have excluded them from the bargaining unit.

Subsequent to the hearing of this application on February 18th, 1965, the Board by an endorsement dated February 19th, 1965 appointed Mr. F. D. Edwards, Examiner, to inquire into and report to the Board on the duties and responsibilities of forty-six persons whose eligibility for inclusion in any bargaining unit deemed to be appropriate for collective bargaining by the Board was challenged by the respondent.

By letter dated March 9th, 1965 the solicitors for the applicant requested that the Board direct the immediate taking of a representation vote and that the persons whose status is subject to an inquiry in accordance with the Board's endorsement of February 19th, 1965 be permitted to cast segregated ballots. The solicitors for the respondent and the representative of a group employees (who is a party to this application), by letter dated March 17th and March 13th, 1965, respectively concurred in the request of the applicant.

THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN EACH OF THE TWO VOTING CONSTITUENCIES SET OUT BELOW:

- #1 ALL EMPLOYEES OF THE RESPONDENT COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE EMPLOYEES! ASSOCIATION OF THE CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES DATED APRIL 1ST, 1964 IN THE BARGAINING UNIT INCORPORATED INTO THE SAID COLLECTIVE AGREEMENT WHICH IS DEFINED AS ALL NON-CONFIDENTIAL AND NON-SUPERVISORY EMPLOYEES OF THE TESTING LABORATORIES WITH THE EXCEPTION ONLY OF SUCH EMPLOYEES AS MAY BE COMPRISED IN THE PROFESSIONAL ENGINEERING GROUP OF THE CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES:
- #2 ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN
  TORONTO SAVE AND EXCEPT MANAGERS, PERSONS ABOVE
  THE RANK OF MANAGER AND PERSONS DESCRIBED IN
  VOTING CONSTITUENCY #1.

THE RESULTS OF THE VOTES ARE AS FOLLOWS:-

VOTING CONSTITUENCY #1

Number of names on revised voters\* list

Number of ballots cast

Number of ballots marked in favour of applicant

Number of ballots marked in favour of The Employees

Association of the Canadian Standards Association

Testing Laboratories

127

127

96

#### VOTING CONSTITUENCY #2

Number of names on revised
voters' List 51
Number of Ballots Cast 62
Number of Ballots Segregated
and not counted 11
Number of Ballots Marked IN
FAVOUR OF APPLICANT 27
Number of Ballots Marked
AGAINST APPLICANT 24

10102-64-R: International Union Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. McCord Corporation (Respondent).

Unit: "all employees of the respondent at Orangeville, save and except foremen, Persons above the rank of foreman office and sales staff." (71 employees in the unit).

NUMBER OF	NAMES ON REVISED			
VOTERS!	LIST			107
NUMBER OF	BALLOTS CAST		122	
NUMBER OF	BALLOTS SEGRE-			
GATED AND	D NOT COUNTED	17		
Number of	BALLOTS SPOILED	2		
NUMBER OF	BALLOTS MARKED IN			
FAVOUR O	F APPLICANT	88		
NUMBER OF	BALLOTS MARKED			
AGAINST .	APPLICANT	15		

(SEE INDEXED ENDORSEMENT PAGE 203).

10157-64-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)

V. ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS SHOP AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED			
VOTERS! LIST			25
NUMBER OF BALLOTS CAST		25	
NUMBER OF BALLOTS SPOILED	1		
Number of BALLOTS MARKED IN			
FAVOUR OF APPLICANT	17		
NUMBER OF BALLOTS MARKED			
AGAINST APPLICANT	7		

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

OF THE RESPONDENT WORKING OUTSIDE OF ITS SHOP AND COMING WITHIN THE APPLICANT'S JURISDICTION, SEEKS CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN ITS SHOP AT BURLINGTON WITH CERTAIN EXCEPTIONS. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF RENTAL AND OPERATION OF CONSTRUCTION EQUIPMENT AND THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ENGAGED IN A VARIETY OF TASKS ANCILLARY TO THESE OPERATIONS. AT THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT OBJECTED TO THE BARGAINING UNIT SOUGHT BY THE APPLICANT ON THE GROUND THAT THE APPLICANT DID NOT BY ITS CONSTITUTION ASSERT A JURISDICTION WHICH WOULD INCLUDE ALL OF THE CLASSES OF EMPLOYEES INCLUDED IN THE SUGGESTED BARGAINING UNIT. Counsel supported his objection only by reading certain PORTIONS OF THE UNION'S CONSTITUTION. THERE DOES NOT. HOWEVER, APPEAR TO BE ANY EXPRESS EXCLUSION OF ANY OF THE CLASSIFICATIONS AFFECTED BY THIS APPLICATION FROM THE JURISDICTION OF THE TRADE UNION. IT WILL BE SEEN THAT THE CIRCUMSTANCES OF THIS CASE ARE QUITE DIFFERENT FROM THOSE IN THE CANADIAN CANNERS LIMITED CASE, BOARD FILE No. 10049-64-R, WHERE THE BOARD FOUND IN AN APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES QUITE UNLIKE THAT IN THE PRESENT CASE, THAT "THE LANGUAGE OF THE CONSTITUTION DOES IN TERMS PURPORT TO EXCLUDE FROM MEMBER-SHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT". IT HAS NOT BEEN SHOWN THAT SUCH A PROPOSITION APPLIES WITH RESPECT TO EMPLOYEES IN THE BARGAINING UNIT PROPOSED IN THIS CASE. THE DECISION IN THIS CASE, HOWEVER, SHOULD NOT BE CONSTRUED AS INVOLVING ANY FINDING THAT THE APPLICANT HAS REGULARLY TAKEN INTO MEMBERSHIP PERSONS EXCLUDED THEREFROM BY THE EXPRESS LANGUAGE OF ITS CONSTITUTION.

# APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

## No VOTE CONDUCTED

9251-64-R: United Garment Workers of America Local Union #253 (Applicant) v. Mac Mor Sportswear Limited (Respondent). (19 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"While the applicant has requested Leave to Withdraw, the Board, having regard to its practice in such cases, must dismiss the application."

(SEE INDEXED ENDORSEMENT PAGE 197 ).

9745-64-R: United Garment Workers of America Local Union #253 (Applicant) v. Liberty Sportswear Limited (Respondent) (21 employees). THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"While THE APPLICANT HAS REQUESTED LEAVE TO WITHDRAW,
THE BOARD, HAVING REGARD TO ITS PRACTICE IN SUCH CASES,
MUST DISMISSED THE APPLICATION."

9746-64-R: United Garment Workers of America Local Union #253 (Applicant) v. Major Sportswear Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"While the applicant has requested leave to withdraw, the Board, having regard to its practice in such cases, must dismiss the application."

<u>9747-64-R</u>: United Garment Workers of America Local Union #253 (Applicant) v. Ecclestone Sportswear (a Division of 50 Ecclestone Drive Limited) (Respondent). (35 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"While the Applicant has requested leave to withdraw, the Board, having regard to its practice in such cases, must dismiss the application."

10141-64-R: Local Union 804, International Brotherhood of Electrical Workers AFL-CIO-CLC (Applicant) v. Ontario Water Resources Commission (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 205 ).

10353-65-R: ETOBICOKE WINE WORKERS UNION LOCAL No 1 (APPLICANT) v. THE PARKDALE WINES LIMITED (RESPONDENT). (20 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 213).

10269-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. EASTLAKE EQUIPMENT COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 419, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (INTERVENER) (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 211).

10279-65-R: The Canadian Union of Public Employees Local 956 (Applicant) v. Timmins High School Board (Respondent).

Unit: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT BUSINESS ADMINSTRATOR AND HEAD OFFICE GIRL." (7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE

BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

IN VIEW OF THE ABOVE FINDINGS, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY FINDING WITH RESPECT TO THE APPLICANT'S STATUS AS A TRADE UNION.

THE APPLICATION IS THEREFORE DISMISSED."

10284-65-R: United Steelworkers of America (Applicant) v. Slough Estates (Canada) Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS WAREHOUSING AND ASSEMBLING OPERATION AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"At the original hearing of this application on May 11th, 1965 counsel for the respondent submitted to the Board the name of Wayne Vandusen and alleged that he had not paid a one dollar initiation fee on the membership card submitted by the applicant union on his behalf. By letter dated May 11th, 1965 counsel for the respondent further alleged that Vandusen, in fact, had not signed an application for membership card in the applicant union. The Board after conducting a preliminary investigation into the allegations of the respondent set the matter down for hearing to inquire into the circumstances surrounding the securing of the Evidence of membership that was submitted by the union for Wayne Vandusen.

VANDUSEN TESTIFIED THAT HE DID NOT SIGN THE APPLICATION OR RECEIPT PORTION OF THE MEMBERSHIP CARD SUBMITTED BY THE APPLICANT UNION FOR HIM AND THAT HE HAD NOT AUTHORIZED ANYONE TO SIGN A MEMBERSHIP CARD ON HIS BEHALF. HE FURTHER TESTIFIED THAT HE HAD NOT AUTHORIZED ANYONE TO PAY A DOLLAR INITIATION FEE ON HIS BEHALF. FURTHER, HE STATED THAT AT NO TIME HAD HE BEEN APPROACHED TO JOIN THE APPLICANT UNION AND HE HAD NOT EXPRESSED HIS ATTITUDE TOWARDS THE UNION WITH ANYONE.

THE EVIDENCE OF WAYNE VANDUSEN IS THAT HE LEFT AJAX ON THE EVENING OF WEDNESDAY, APRIL 14TH AND WENT TO BRIGHTON WHICH IS HIS HOME TOWN FOR THE REMAINDER OF THE WEEK. HE TESTIFIED THAT HE ASKED HIS FRIEND AND FELLOW EMPLOYEE RALPH SMITH TO COLLECT HIS

PAY ENVELOPE OF THURSDAY, APRIL 15TH AND AT THE SAME TIME VANDUSEN AUTHORIZED SMITH TO MAKE PAYMENTS FROM HIS PAY ENVELOPE ON ANY OF HIS OUTSTANDING DEBTS. ON FRIDAY EVENING APRIL 16TH SMITH CAME TO BRIGHTON FOR THE WEEKEND AND INFORMED VANDUSEN THAT HE (SMITH) HAD PAID A DOLLAR INITIATION FEE FOR MEMBERSHIP IN THE APPLICANT UNION OUT OF VANDUSEN'S PAY ENVELOPE. VANDUSEN TESTIFIED THAT HE TOLD SMITH THAT IT WAS ALL RIGHT. THE FOLLOWING WEEK ANOTHER FELLOW EMPLOYEE NORMAN MARPLE TOLD VANDUSEN THAT HE (MARPLE) HAD SIGNED A UNION MEMBERSHIP CARD FOR VANDUSEN. VANDUSEN TOLD MARPLE THAT IT WAS FINE WITH HIM.

THE EVIDENCE OF MARPLE, SMITH AND ANOTHER EMPLOYEE ROSS KINGYENS IS THAT ON THE AFTERNOON OF APRIL 14TH, AFTER WORKING HOURS, THE THREE OF THEM HAD DRIVEN IN KINGYENS CAR TO THE UNION HALL WHERE MARPLE PICKED UP BLANK MEMBERSHIP CARDS FROM GRANT TAYLOR. A REPRESENTATIVE OF THE APPLICANT UNION. MARPLE TESTIFIED THAT HE HAD RECEIVED SOME INSTRUCTIONS FROM TAYLOR WITH REGARD TO THE SECURING OF MEMBERSHIP EVIDENCE. SMITH SEVIDENCE IS THAT SOME DISCUSSION ENSUED AS TO VANDUSEN JOINING THE UNION AND THAT THEY THEREUPON DROVE TO VANDUSEN'S BOARDING HOUSE. VANDUSEN, HOWEVER, HAD ALREADY LEFT FOR BRIGHTON. THE SAME EVENING MARPLE, SMITH AND KINGYENS MET IN MARPLE? S HOME. AFTER SOME DISCUSSION ALL THREE OF THEM AGREED THAT IT WOULD BE ALL RIGHT FOR MARPLE TO SIGN A MEMBERSHIP CARD FOR VANDUSEN. MARPLE TESTIFIED THAT HE SIGNED VANDUSEN S NAME ON BOTH THE APPLICATION AND THE RECEIPT PORTION OF A MEMBERSHIP CARD AND THAT THIS WAS DONE IN THE PRESENCE OF SMITH AND KINGYENS. THE EVIDENCE OF BOTH KINGYENS AND SMITH. HOW-EVER, IS THAT THE CARD WAS NOT SIGNED IN THEIR PRESENCE. DURING THE SAME EVENING KINGYENS DROVE MARPLE AROUND IN HIS CAR WHILE MARPLE SIGNED UP OTHER EMPLOYEES IN THE UNION.

MARPLE ORIGINALLY TESTIFIED THAT HE HAD DISCUSSED THE UNION WITH VANDUSEN AND THAT VANDUSEN HAD TOLD HIM THAT HE WAS IN FAVOUR OF THE UNION. IN CROSS-EXAMINATION, HOWEVER, HE WAS UNABLE TO RECALL ANY OCCASION WHEN VANDUSEN HAD INDICATED THAT HE WANTED TO JOIN THE APPLICANT UNION. BOTH SMITH AND KINGYENS TESTIFIED THAT THEY THOUGHT THAT VANDUSEN WAS IN FAVOUR OF THE UNION BUT BOTH ADMITTED THAT THEY COULD NOT RECALL VANDUSEN HAVING EXPRESSLY STATED HIS DESIRES.

Marple testified that he signed all the cards submitted with this application as collector of the one dollar initiation fee. His evidence is that he signed as the collector on all the cards on the Wednesday evening although he did not, in fact, collect the initiation fee from any of the employees until the following day. Marple, Smith and Kingyens all testified that Smith paid the one dollar out of Vandusen's pay envelope to Marple for Vandusen's initiation fee on Thursday. After working hours on Thursday afternoon Marple went to the union hall and gave Taylor eight application for membership cards and \$8.00. Marple's evidence

IS THAT THE ONLY CONVERSATION THAT TOOK PLACE BETWEEN HIMSELF
AND TAYLOR ON THAT OCCASION WAS THAT HE TOLD TAYLOR THAT EVERYONE
WAS FOR THE UNION EXCEPT ONE FELLOW WHO WOULD NOT SIGN A CARD.
ACCORDING TO MARPLE THERE WAS NO OTHER DISCUSSION. HE DID NOT TELL
TAYLOR THAT HE HAD SIGNED A CARD ON BEHALF OF VANDUSEN.

IT IS CLEAR FROM THE EVIDENCE THAT MARPLE SUBMITTED AS EVIDENCE OF MEMBERSHIP FOR VANDUSEN A MEMBERSHIP CARD WHICH HE (MARPLE) HAD SIGNED IN VANDUSEN'S NAME WITHOUT ANY AUTHORIZATION FROM VANDUSEN. THE EVIDENCE FURTHER REVEALS THAT MARPLE TOOK THIS ACTION WITHOUT ANY REAL KNOWLEDGE OF VANDUSEN'S ATTITUDE TOWARDS THE APPLICANT UNION. MOREOVER, MARPLE SUBMITTED A ONE DOLLAR INITIATION FEE WITH THE MEMBERSHIP CARD KNOWING THAT VANDUSEN HAD NOT PAID THE ONE DOLLAR ON HIS OWN BEHALF. THE EVIDENCE DOES NOT INDICATE THAT SMITH PURPORTED TO HAVE AUTHORITY TO PAY THE ONE DOLLAR INITIATION FEE FOR VANDUSEN. THE TESTIMONY OF BOTH SMITH AND VANDUSEN MAKES IT QUITE CLEAR THAT SMITH, IN FACT, HAD NO AUTHORITY TO PAY THE ONE DOLLAR INITIATION FEE ON BEHALF OF VANDUSEN.

WE CAN ONLY CONCLUDE FROM THE EVIDENCE THAT IN SIGNING VANDUSEN'S NAME ON A MEMBERSHIP CARD MARPLE MUST HAVE OR SHOULD HAVE REALIZED THAT HIS ACTIONS COULD ONLY HAVE THE EFFECT OF MISLEADING THE BOARD. IN OUR OPINION, THE FACT THAT VANDUSEN SUBSEQUENTLY AFFIRMED THE SUBMITTING OF A MEMBERSHIP CARD ON HIS BEHALF AND RATIFIED THE PAYMENT OF THE ONE DOLLAR INITIATION FEE IN NO WAY EXONERATES MARPLE'S CONDUCT. WE WOULD POINT OUT THAT MARPLE SUBMITTED THE EVIDENCE OF MEMBERSHIP FOR VANDUSEN TO TAYLOR ON APRIL 15TH. PRIOR TO ANY CONFIRMATION BY VANDUSEN.

WE, OF COURSE, ARE NOT PREPARED TO GIVE ANY WEIGHT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR VANDUSEN. WHILE THERE IS NO EVIDENCE OF ANY OTHER IRREGULARITIES WITH REGARD TO THE MEMBER-SHIP EVIDENCE THE BOARD IN PREVIOUS CASES HAS REFUSED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP WHERE A SINGLE DEFECTIVE CARD HAS BEEN SUBMITTED TO THE KNOWLEDGE OF A RESPONSIBLE UNION OFFICIAL (SEE R.C.A. VICTOR COMPANY LIMITED CASE, CCH C.L.L.R. TRANSFER BINDER 149-154, 917,067, C.L.S. 76-412). WHILE THE ONUS RELATING TO THE CONDUCT OF A RANK-AND-FILE EMPLOYEE GENERALLY IS NOT AS EXACTING AS THAT WHICH RESTS UPON A PAID UNION OFFICIAL. IN THE INSTANT CASE, IT MUST BE BORNE IN MIND THAT MARPLE WAS GIVEN FULL RESPONSIBILITY FOR THE ORGANIZING CAMPAIGN AND THE SIGNING UP OF EMPLOYEES IN THE UNION. WE WOULD MENTION ALSO THAT MARPLE SIGNED AS COLLECTOR ON EVERY MEMBERSHIP CARD (SEE DOMINION STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 447). WE WOULD ADD THAT IF TAYLOR DID GIVE CLEAR INSTRUCTIONS TO MARPLE AS TO THE PROPER MANNER IN WHICH TO SECURE EVIDENCE OF MEMBERSHIP WHICH SATISFIES THE BOARD'S REQUIREMENTS, IT IS APPARENT THAT MARPLE ACTED CONTRARY TO THOSE INSTRUCTIONS. IF ON THE OTHER HAND MARPLE WAS NOT SO ADVISED, THE UNION IN GIVING MARPLE FULL RESPONSIBILITY FOR THE CONDUCT OF

THE ORGANIZING CAMPAIGN MUST BEAR THE CONSEQUENCES. HAVING REGARD TO ALL THE CIRCUMSTANCES WE FIND THAT A DOUBT IS CAST ON ALL THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION. THE BOARD THEREFORE IS NOT PREPARED TO PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP FILED IN THIS APPLICATION.

THE APPLICATION, ACCORDINGLY, IS DISMISSED,"

BOARD MEMBER D. McDERMOTT DISSENTED AND SAID:-

"WITH THE GREATEST RESPECT! CANNOT AGREE WITH THE FINDINGS

OF MY COLLEAGUES IN THIS MATTER, AND MUST THEREFORE RECORD MY DISSENT.

THE ACTIONS OF MARPLE WITH REGARD TO THE EVIDENCE OF MEMBERSHIP

SUBMITTED ON BEHALF OF VANDUSEN WERE IRRESPONSIBLE AND HIGHLY

IRREGULAR. HOWEVER, THE SERIOUSNESS OF HIS MISDEMEANOUR IS CONSIDER—

ABLY REDUCED BY THE EVIDENCE BEFORE US WHICH REVEALS THE FOLLOWING

EXTENUATING FACTORS.

- 1. HE SIGNED THE CARD FOR VANDUSEN AFTER RECEIVING
  THE OPINIONS AND ADVICE OF TWO VERY CLOSE FRIENDS OF VANDUSEN.
- 2. HIS ACTIONS WERE SUBSEQUENTLY FULLY APPROVED BY VANDUSEN HIMSELF. VANDUSEN WAS NOT, AND IS NOT A COMPLAINANT.
- 3. THE REQUIRED PAYMENT OF ONE DOLLAR WAS IN FACT MADE, AND MADE FROM VANDUSEN'S OWN MONEY.
- 4. DESPITE THE IRREGULARITY, THERE IS NO EVIDENCE THAT THE TRUE WISHES OF VANDUSEN WERE VIOLATED.

THE DECISION OF THE MAJORITY FINDS THAT A SINGLE DEFECTIVE CARD CASTS DOUBT ON ALL OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION. ON THIS PORTION OF MY DISSENT | MUST EXPRESS MYSELF IN THE STRONGEST POSSIBLE TERMS. THERE IS ABSOLUTELY NO EVIDENCE OF IRREGULARITIES WITH REGARD TO THE OTHER CARDS SUBMITTED. INDEED, THE EVIDENCE SHOW THAT ALL BUT ONE OF THE RESPONDENT'S EMPLOYEES DESIRED THE APPLICANT UNION TO REPRESENT THEM. IT IS ARGUED IN THIS CASE THAT WE SHOULD TREAT THE IRREGULARITY HERE IN THE SAME FASHION AS A SINGLE IRREGULARITY FOUND IN A PETITION OF DISSENTING EMPLOYEES. THE ONTARIO LABOUR RELATIONS ACT DESPITE ITS MANY SHORTCOMINGS IS A PIECE OF SOCIAL LEGISLATION DESIGNED TO FACILITATE THE ORGANIZATION OF EMPLOYEES INTO BONA-FIDE TRADE UNIONS OF THEIR CHOICE. | CANNOT EQUATE THE DESIRES OF A GROUP OF EMPLOYEES SEEKING COLLECTIVE BARGAINING RIGHTS THROUGH THE PROPER ORGANIZATIONAL CHANNELS. AND BY THE PAYMENT OF THE REQUIRED ONE DOLLAR, AND THROUGH A LEGITIMATE TRADE UNION WITH TRIED AND TESTED CREDENTIALS, WITH A GROUP OF DISSENTORS WITH NO CREDENTIALS, NO PAYMENT OF A DOLLAR. AND WITH AN OBJECTIVE AT VARIANCE WITH THE SPIRIT AND PURPOSE OF THE ACT. WITH RESPECT | SUGGEST THERE IS NO COMPARISON. Neither can I agree with the suggestion that Marple

BE REGARDED AS A RESPONSIBLE AGENT OF THE UNION. MARPLE WAS A COLLECTOR. A COLLECTOR IS NOT AN AGENT IN THE TRUE SENSE OF THE WORD, AND ESPECIALLY NOT IN THE VERNACULAR OF LABOUR. HE CANNOT BE EQUATED WITH A SOPHISTICATED PROFESSIONAL TRADE UNIONIST WHO OBVIOUSLY IS OBLIGED TO UNDERTAKE MORE RESPONSIBILITY THAN AN UNINITIATED PERSON.

FOR THE FOREGOING REASONS | WOULD HAVE CERTIFIED THE APPLICANT UNION."

10321-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. De Havilland Aircraft of Canada Limited (Respondent). (80 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE TO WITHDRAW ITS APPLICATION IN THIS MATTER FOLLOWING THE APPOINTMENT OF AN EXAMINER.

HAVING REGARD TO THE TIME AT WHICH THE REQUEST WAS MADE, THE BOARD FOLLOWING ITS USUAL PRACTICE DENIES THE REQUEST AND DISMISSES THIS APPLICATION.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

10412-65-R: IROQUOIS FALLS & CALVERT DISTRICT PUBLIC SERVICE EMPLOYEES
(APPLICANT) v. ABITIBI POWER & PAPER COMPANY LIMITED (RESPONDENT). (16 EMPLOYEES

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION.

The Board finds that the applicant has no documentary evidence in the form of a constitution or by-law which would evidence its existence as a trade union within the meaning of section 1 (1) (J) of the Labour Relations Act.

For the reasons given orally at the Hearing of this matter the Board finds that the applicant has failed to satisfy the Board that it is a trade union within the meaning of section 1 (1) ( $_{\rm J}$ ) of the Act and this application is therefore dismissed."

10415-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. AQUA-TOPS LIMITED (RESPONDENT). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS NOT SATISFIED ON THE BASIS OF THE EVIDENCE

BEFORE IT THAT AT THE TIME OF THE APPLICATION AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BAR-GAINING UNIT WHICH THE BOARD WOULD FIND APPROPRIATE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

THE APPLICATION IS DISMISSED."

10421-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)

V. LYONS FUEL HARDWARE AND SUPPLIES LIMITED (RESPONDENT). (24 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"No one appearing for the applicant, the application is therefore dismissed."

 $\frac{10429-65-R}{\text{V. London}}$ : The International Union of Operating Engineers Local 944 (Applicant) v. London Steel Industries (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE FACT THAT THERE IS ONLY ONE EMPLOYEE WHO IS PRESENTLY IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT, THIS APPLICATION MUST, ON THAT BASIS, BE DISMISSED."

10434-65-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V.

SUPERSWEET FORMULA FEEDS DIVISION OF ROBIN HOOD FLOUR MILLS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 212 ).

10449-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:C10:CLC (APPLICANT) v. AULT CHEESE COMPANY LIMITED (RESPONDENT). (9 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant failed to file a Declaration Concerning Membership Documents (Form 9) in accordance with the Board  $^{\dagger}$  Rules of Procedure.

THIS APPLICATION THEREFORE IS DISMISSED."

10456-65-R: International Brotherhood of Electrical Workers, Local Union 339 (Applicant) v. Ace Motor Electric (Respondent). (3 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT OR THE RESPONDENT.

NO ONE APPEARING FOR THE APPLICANT AT THE HEARING, THIS APPLICATION IS DISMISSED."

10484-65-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. EASTWOOD FOODS LTD (RESPONDENT). (12 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"No one appearing for the applicant at the hearing, this application is dismissed."

10498-65-R: International Association of Bridge, Structural and Ornamental Tronworkers, Local 721 (Applicant) v. P.T.C. Construction Limited (Respondent). (5 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant failed to file with the Board Form 60, Declaration Concerning Membership Documents, Construction Industry, within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. In accordance with its usual practice the application is Therefore Dismissed."

10503-65-R: General Truck Drivers Union Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Applicant) v. Texpack Limited & Surgitex Limited (Respondent) v. Canadian Textile Council (Intervener). (6 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent and the intervener are parties to a collective agreement which was entered into on May  $1^4 \rm Th,~1965,$  which agreement is effective from May 29th, 1965, until May 28th, 1967, covering all employees of the respondent at Brantford, with certain exceptions not here relevant.

THE EMPLOYEES FOR WHOM THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT ARE COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. SINCE THIS APPLICATION WAS MADE ON JUNE 11th, 1965, THE APPLICATION IS ACCORDINGLY UNTIMELY PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

10519-65-R: International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local Union No. 157 (Applicant) v. McNamara Equipment Construction (Respondent). (19 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"No one appearing for the applicant at the Hearing, this application is dismissed."

## DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10004-64-R: NORTHERN ELECTRIC EMPLOYEE ASSOCIATION (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED, RESEARCH AND DEVELOPMENT LABORATORIES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT'S LABORATORY FACILITIES ORGANIZATION AT ITS RESEARCH AND DEVELOPMENT LABORATORIES IN NEPEAN TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PROFESSIONAL ENGINEERS EMPLOYED IN A PROFESSIONAL CAPACITY, ENGINEERING ASSOCIATES, ENGINEERING TECHNICIANS, DRAFTSMEN, PHOTOGRAPHERS AND REPRODUCTION PERSONNEL." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE SPECIAL CIRCUMSTANCES OF THIS CASE).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS REGULARLY ENGAGED IN COIL AND TRANSFORMER WINDING ARE INCLUDED IN THE BARGAINING UNIT.

Number of Names on Revised

Voters' List 42

Number of Ballots Cast 41

Number of Ballots Marked in Favour of Applicant 20

Number of Ballots Marked 43

AGAINST APPLICANT 21

 $\underline{10038-64-R}$  : International Association of Machinists (Applicant) v. Cuttei-Hammer Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, UNIVERSITY STUDENTS INVOLVED IN IN-PLANT TRAINING PROGRAM AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (94 EMPLOYEES).

Number of Names on Revised

voters' List 85

Number of Ballots Cast 83

Number of Ballots Spoiled 2

Number of Ballots Marked IN

FAVOUR OF APPLICANT 37

Number of Ballots Marked

AGAINST APPLICANT 44

(SEE INDEXED ENDORSEMENT PAGE 200 ).

10129-64-R: Bakery and Confectionery Workers! International Union of America, Local 264 (Applicant) v. Parisian Fabric Care Services Limited (Respondent).

UNIT: "ALL DRIVER-SALESMEN IN THE ROUTE DELIVERY DEPARTMENT OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ROUTE FOREMEN." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names on voters' list

Number of Ballots Cast

Number of Ballots Marked in

Favour of Applicant

Number of Ballots Marked

Against Applicant

8

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF."

### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

10274-64-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. McNamara Corporation Limited, International Division (Respondent). (6 employees).

10299-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Applicant) v. Cayuga Quarries Limited (Respondent). (2 employees).

10342-65-R: Jail Employees' Association of Hamilton (Applicant) v. The Corporation of the City of Hamilton (Respondent). (53 employees).

10385-65-R: Local Union #1940, United Brotherhood of Carpenters & Joiners of America, 124-Sydney St. S., Kitchener, Ontario (Applicant) v. Dutchmen Homes Limited, 875-Henry Sturm Blvd., Kitchener, Ontario (Respondent). (14 employees).

10454-65-R: United Brotherhood of Carpenters & Joiners of America, Local Union 1071 (Applicant) v. West York Construction Co. Ltd. (Respondent) (2 employees).

10473-65-R: United Packinghouse, Food and Allied Workers (Applicant) v. Canadian Canners Limited (Respondent). (4 employees).

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

#### DURING JUNE

9757-64-R: LEO PAUL CARRIERE (APPLICANT) v. LUMBER AND SAWMILL WORKERS UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) v. COCHRANE ENTERPRISES LIMITED (INTERVENER) (DISMISSED). (62 EMPLOYEES).

(Re: Cochrane Enterprises Limited, Cochrane, Ontario)

Number of names on revised

VOTERS' LIST

Number of Ballots Cast

AND NOT COUNTED

AND NOT

(WRITTEN REASONS).

10089-64-R: WILLIAM PETER (APPLICANT) V. RETAIL, WHOLESALE DAIRY & GENERAL WORKERS UNION, LOCAL 440, OF THE RETAIL WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC: (RESPONDENT) (GRANTED) (8 EMPLOYEES).

(Re: Halton Dairy Products Ltd., Armstrong Creamery, Orangeville, Ontario).

Number of Names on Revised

voters' List 10

Number of Ballots Cast 10

Number of Ballots Marked in

Favour of Respondent 1

Number of Ballots Marked

against Respondent 9

10097-64-R: Mr. John Dyck (Applicant) v. United Steelworkers of America (Respondent) (GRANTED) (15 employees).

(Re: Reliance Tool and Die Casting Ltd., St. Thomas, Ontario).

Number of names on revised

voters! List 13

Number of ballots cast 13

Number of ballots marked in favour of respondent 4

Number of ballots marked against respondent 9

(SEE INDEXED ENDORSEMENT PAGE 215).

10308-65-R: EMPLOYEES OF DETROIT GASKET AND MANUFACTURING (CANADA) LTD.

(APPLICANTS) v. THE TEAMSTERS' UNION LOCAL No. 880 OF ONTARIO, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) v. DETROIT GASKET AND MANUFACTURING (CANADA) LTD.

(INTERVENER) (GRANTED) (42 EMPLOYEES).

(Re: Detroit Gasket and Manufacturing (Canada) Ltd., Petrolia, Ontario).

NUMBER OF NAMES ON REVISED			
VOTERS LIST			30
NUMBER OF BALLOTS CAST		30	
NUMBER OF BALLOTS SEGREGATED			
AND NOT COUNTED	2		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF RESPONDENT	0		
NUMBER OF BALLOTS MARKED			
AGAINST RESPONDENT	28		

10336-65-R: Keith Williams (Applicant) v. Hotel and Restaurant Employees and Bartenders International Union A.F. of L. Local 197 (Respondent) (GRANTED) (10 EMPLOYEES).

(RE: Hamilton Naval Veteran's Association, Hamilton, Ontario).

Number of names on revised

voters' List 10

Number of ballots cast 10

Number of ballots marked in

favour of respondent 1

Number of ballots marked

against respondent 9

10362-65-R: CLARENCE THOMAS SARGENT AND GEORGE WILLIAM NEWTON (APPLICANTS) v. Hotel and Restaurant Employees' and Bartenders International Union, Restaurant, Cafeteria and Tavern Employees' Union Local 254 (Respondent) (DISMISSED) (2 EMPLOYEES).

(RE: BRANTFORD AIR FORCE CLUB, BRANTFORD, ONTARIO)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application pursuant to section 45 of the Act for a declaration terminating bargaining rights of the respondent.

The trade union was certified on December 1st, 1964, as bargaining agent for all employees of the respondent at Brantford, save and except assistant manager, persons above the rank of assistant manager and office staff. On December 4th, 1964, the respondent gave notice to bargain to the employer pursuant to section 11 of the Act.

Under the provisions of section 45 of the Act, where notice has been given pursuant to section 11, the only circumstance in which an application such as this could successfully be made would be where the trade union fails to commence to bargain within sixty days from the giving of notice, or having commenced to bargain, but before the Minister has appointed a conciliation officer or mediator, allows a period of sixty days to elapse during which it has not sought to bargain. Neither of these circumstances has been established in the present case. The evidence establishes

THAT THE UNION CONTACTED THE EMPLOYER WITH A VIEW TO COMMENCING NEGOTIATIONS ON SEVERAL OCCASIONS DURING THE MONTHS OF JANUARY, FEBRUARY AND MARCH, 1965, AND THAT SPECIFIC PROPOSALS WERE SENT TO THE EMPLOYER DURING THIS PERIOD. DELAY IN MEETING HAS BEEN ATTRIBUTABLE EITHER TO THE UNION'S ACCOMMODATION OF THE EMPLOYER OR TO THE EMPLOYER'S OWN PROCRASTINATION.

THE APPLICATION ACCORDINGLY IS DISMISSED."

10383-65-R: ROBERT D. GIROUX (APPLICANT) V. OSHAWA TYPOGRAPHICAL UNION (I.T.U.) LOCAL 969 (RESPONDENT) (WITHDRAWN) (43 EMPLOYEES).

(Re: General Printers Limited, Oshawa, Ontario).

10472-65-R: PHILIP KING, MICHAEL RITCHIE AND ROY SCOTT (APPLICANTS) v. RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254, A.F.L.-C.1.0.-C.L.C., HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (RESPONDENT) (DISMISSED) (3 EMPLOYEES).

(Re: Brantford Ex-Imperial Veterans' Social Club,
Brantford, Ontario)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application pursuant to section 45 of The Labour Relations Act for a declaration terminating the bargaining rights of the respondent.

The respondent was certified on December 1st, 1964 for all employees of the Brantford Ex-Imperial Veterans' Social Club Brantford, save and except assistant manager. Persons above the rank of assistant manager and office staff. On December 7th, 1964, the respondent gave written notice of its desire to bargain to the employer pursuant to section 11 of the Act.

Under the provisions of section 45 of the Act, where notice has been given pursuant to section 11, the only circumstances in which an application such as this would be successful is where the trade union fails to commence to bargain within sixty days from the giving of notice, or having commenced to bargain, but before the Minister has appointed a conciliation officer or mediator, allows a period of sixty days to elapse during which it has not sought to bargain. Neither of these circumstances has been established in evidence in the present application.

THE APPLICATION ACCORDINGLY IS DISMISSED."

10477-65-R: LILY HUNKING, DAVE WRIGHT, CLAUDINE BARR, MURIEL BECKETT, JOE KOLESINKOWICZ, GEORGE BOLOTENKO, JOHN BELL AND RENA SMEGAL (APPLICANTS) V. RESTAURANT UNION LOCAL 254 (RESPONDENT) (DISMISSED) (10 EMPLOYEES).

(Re: A AND W DRIVE-IN SIMCOE LTD., OSHAWA, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON JUNE 4TH, 1965, SEPARATE APPLICATIONS FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT, RESTAURANT UNION, LOCAL 254, WITH RESPECT TO EMPLOYEES OF A & W DRIVE-IN SIMCOE LTD. IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT WERE FILED BY LILY HUNKING, DAVE WRIGHT, CLAUDINE BARR, MURIEL BECKETT, JOE KOLESINKOWICZ, GEORGE BOLOTENKO, JOHN BELL AND RENA SMEGAL.

THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE AND THEY ARE HEREBY CONSOLIDATED. THE STYLE OF CAUSE OF THIS APPLICATION SHALL BE "LILY HUNKING, DAVE WRIGHT, CLAUDINE BARR, MURIEL BECKETT, JOE KOLESINKOWICZ, GEORGE BOLOTENKO, JOHN BELL AND RENA SMEGAL, APPLICANTS, AND RESTAURANT UNION, LOCAL 254, RESPONDENT".

THE RESPONDENT WAS CERTIFIED AS THE BARGAINING AGENT OF ALL EMPLOYEES OF A & W DRIVE-IN SIMCOE LTD. AT OSHAWA, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ON THE 29TH DAY OF SEPTEMBER, 1964.

THIS APPLICATION WAS MADE PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT, THE RELEVANT PORTION OF WHICH READS AS FOLLOWS:

(1) IF A TRADE UNION DOES NOT MAKE A
COLLECTIVE AGREEMENT WITH THE EMPLOYER
WITHIN ONE YEAR AFTER ITS CERTIFICATION,
ANY OF THE EMPLOYEES IN THE BARGAINING
UNIT DETERMINED IN THE CERTIFICATE MAY
APPLY TO THE BOARD FOR A DECLARATION
THAT THE TRADE UNION NO LONGER REPRESENTS
THE EMPLOYEES IN THE BARGAINING UNIT.

SINCE A YEAR HAS NOT ELAPSED BETWEEN THE DATE OF THE CERTIFICATION AND THE DATE OF THE MAKING OF THIS APPLICATION, THIS APPLICATION IS UNTIMELY.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

10378-65-R: Douglas H. Cupples Ronald S. Godel William A. Taylor Fred Normington (Applicants) v. Canadian Union of Operating Engineers (Respondent). v. York Central Hospital (Intervener) (DISMISSED) (4 EMPLOYEES).

(RE: YORK CENTRAL HOSPITAL, RICHMOND HILL, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant has applied on May 10th, 1965,

FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF

THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION

45 OF THE LABOUR RELATIONS ACT.

IT APPEARS THAT THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE INTER-VENER ON SEPTEMBER 21st. 1964.

Following certification of the respondent, the respondent served notice to bargain on the intervener on September 24th, 1964 and the parties met and bargained on October 30th, 1964. It further appears that the respondent made no attempt to bargain with the intervener between October 30th, 1964 up to April 14th, 1965, at which time the respondent submitted by mail, a draft collective agreement between the respondent and the intervener.

While the respondent may be subject to criticism for its procrastination in attempting to bargain, the Board must construe the presentation of the draft collective agreement on April 14th, 1965, as an attempt to bargain for a collective agreement.

Since the trade union has not allowed a period of 60 days to elapse prior to the making of this application, during which it has not sought to bargain, this application is untimely.

THE APPLICATION IS THEREFORE DISMISSED."

## APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JUNE

10317-65-R: LA VERENDRYE HOSPITAL EMPLOYEES UNION, LOCAL 795, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. LA VERENDRYE HOSPITAL (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant by reason of a merger of the National Union of Public Employees and the National Union of Public Service Employees has acquired the rights, privileges and duties of Laverendrye Hospital Employees Union, Local 795, National Union of Public Employees which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Laverendrye Hospital and Laverendrye Hospital Employees Union, Local 795, National Union of Public Employees Effective from January 1st, 1963 to December 31st, 1964 and Continuing from year to year thereafter subject to notice.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LAVERENDRYE HOSPITAL EMPLOYEES UNION, Local 795, National Union of Public Employees which was a PARTY TO THE AGREEMENT REFERRED TO WITH THE RESPONDENT WILL ISSUE."

10493-65-R: International Association of Bridge, Structural and Ornamental Tronworkers Local 721 (Applicant) v. National Aluminum Products Company Limited (Respondent) v. United Steelworkers of America and its Local 3950 (Predecessor Trade Union).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant, by reason of a transfer of jurisdiction, has acquired the rights, privileges and duties of the United Steelworkers of America and its Local 3950 which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between the National Aluminum Products Company Limited and United Steelworkers of America and its Local 3950 effective from September 11th, 1963 to November 30th, 1965 and from year to year thereafter subject to notice.

An affirmative declaration under section 47(1) of The Labour Relations Act to the effect that the applicant has acquired the rights, privileges and duties of the United Steel-workers of America and its Local 3950 which was a party to the collective agreement referred to with the respondent will issue."

10521-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL-CIO-CLC (APPLICANT) v. DE LONG SCOVILL LIMITED (RESPONDENT) v. LOCAL 24210 OF THE CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the applicant by reason of transfer of Jurisdiction has acquired the rights, privileges and duties of Local 24210, of the Canadian Labour Congress which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between De Long Scovill Limited and Local 24210 of the Canadian Labour Congress effective from January 1st, 1965 to June 30th, 1967 and from Year to Year thereafter subject to notice.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT TO THE EFFECT THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL 24210 OF THE CANADIAN LABOUR CONGRESS WHICH WAS A PARTY TO THE AGREEMENT REFERRED TO WITH THE RESPONDENT WILL ISSUE."

## APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JUNE

10354-65-U: A. L. WATSON LIMITED (APPLICANT) V. H. WHALEN, M. SCHWARTZ, W. BLAKEY, J. VENIER, B. BURLON AND S. ABOLINS (RESPONDENTS) (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 217 ).

10355-65-U: A. L. Watson Limited (Applicant) v. The BrickLayers! Union No. 2 and the Stonemasons Union No. 26 of Toronto, Ontario (Affiliated with the BrickLayers, Masons, Plasterers International Union of America) (Respondents) (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board notes the agreement of the parties that the evidence heard by the Board in A. L. Watson Limited Case, Board File No. 10354-65-U, be applicable to this matter. (See page 217 of this Report.)

This application with respect to The Stonemasons Union No. 26 of Toronto, Ontario, (affiliated with the Bricklayers, Masons, Plasterers International Union of America) and Donald Williams (Business Representative) is withdrawn at the request of the applicant with the consent of the respondents by Leave of the Board.

Having regard to the evidence adduced in the A. L. Watson Limited Case, Board File No. 10354-65-U and having regard to the Board's decision in that case, we find that the respondent Bricklayers' Union No. 2, attempted to unilaterally alter the terms or conditions of the collective agreement between the Bricklayers' Union No. 2 and the applicant simply by amending its By-Laws. When the By-Laws were enforced by the respondent the inevitable and intended result was the imposition of new work rules and conditions contrary to the applicant's usual practice

AND CONTRARY TO THE INTENT AND PURPOSE OF THE COLLECTIVE AGREEMENT.

THE EVIDENCE IN THIS CASE IS OPEN TO ONLY ONE CONCLUSION AND THAT IS THAT THE BRICKLAYERS! UNION No. 2. THROUGH ITS BUSINESS AGENT, Mr. WILLIAMS, CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF THE EMPLOYEES OF THE APPLICANT AT ITS STE. MADELINE'S SEPARATE SCHOOL, YORK MILLS ROAD, METROPOLITAN TORONTO JOB SITE ON OR ABOUT WEDNESDAY, MAY 5TH, 1965. TO FIND OTHERWISE WOULD PERMIT EITHER PARTY TO A COLLECTIVE AGREEMENT TO UNILATERALLY CHANGE THE TERMS. CONDITIONS OR WORK RULES FIXED BY A COLLECTIVE AGREEMENT SIMPLY BY AMENDING ITS OWN BY-LAWS. IN THE SAME MANNER THAT THE BOARD WOULD NOT PERMIT THE RIGHTS OF A TRADE UNION UNDER A COLLECTIVE AGREEMENT TO BE AFFECTED BY THE UNILATERAL ACTION OF THE SHARE HOLDERS OF A COMPANY WHICH CONTINUED TO BE A PARTY TO THE COLLECTIVE AGREEMENT. THE BOARD WILL NOT PERMIT THE UNILATERAL ACTIONS OF THE MEMBERS OF A TRADE UNION TO ADVERSELY AFFECT THE RIGHTS OF AN EMPLOYER UNDER A COLLECTIVE AGREEMENT. THE RESPONDENT IN THIS CASE HAS IGNORED THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND THE LABOUR RELATIONS ACT AND THERE IS NO REASON FOR THE BOARD TO EXERCISE ITS DISCRETION IN FAVOUR OF THE RESPONDENTS.

IN ADDITION, WHEN MR. WILLIAMS WAS REQUESTED TO LEAVE THE JOB SITE HE INDICATED HIS INTENTION TO TAKE THE BRICKLAYERS WITH HIM AND WHEN THE BRICKLAYERS DID LEAVE WITH HIM THERE IS NO EVIDENCE THAT MR. WILLIAMS ATTEMPTED IN ANY WAY TO ASK THE BRICKLAYERS TO REMAIN ON THE JOB. ON THE CONTRARY, THE FACT THAT THE BRICKLAYERS LEFT THE JOB UNDER THE CIRCUMSTANCES IN WHICH THEY DID, WOULD APPEAR TO HAVE ACCOMPLISHED THE PURPOSE OF MR. WILLIAMS.

Pursuant to the provisions of section 67 of The Labour Relations Act, the Board declares that the respondents and The Bricklayers' Union No. 2, did, on or about May 5th, 1965, call or authorize an unlawful strike engaged in by the employees of the applicant at its Ste. Madeline's Separate School project in Metropolitan Toronto, contrary to the provisions of section 55 of The Labour Relations Act."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

" DISSENT

For the reasons given by Me in A. L. Watson Limited Case, Board File No. 10354-65-U, I would not make the declaration applied for in this case."

10505-65-U: KIMBERLY-CLARK OF CANADA LIMITED (APPLICANT) v. A. E. ALLEN, ET AL (RESPONDENTS) (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 220 ).

10506-65-U: D. AND T. LATHING AND PLASTERING (APPLICANT) v. THE INTER-PROVINCIAL COUNCIL OF LATHERS AND AFFILIATES, LOCAL 360 (RESPONDENTS) (WITHDRAWN).

10508-65-U: LONDON GRANOLUX AND TILE LIMITED (APPLICANT) V. THE INTER-PROVINCIAL COUNCIL OF LATHERS AND AFFILIATES, LOCAL 360 (RESPONDENT) (WITHDRAWN).

10509-65-U: J. A. MacDonald (London) Ltd. (Applicant) v. The Inter-Provincial Council of Lathers and Affiliates, Local 360 (Respondent) (WITHDRAWN).

10516-65-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) v. FRANK CIARMALA, ET AL (RESPONDENTS) (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT

- (1) FRANK CIARMALA, ANTONIO G. FERNANDES, VERISSIMO FERNANDES, WILLIAM GULLIVER, RUSSELL A. MACDONALD, ROBERT MCKENZIE, SILVIO PICCININ AND EDGAR WALLS WERE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT, THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, AND THE ALLIED CONSTRUCTION COUNCIL, EFFECTIVE FROM FEBRUARY 1, 1963 TO SEPTEMBER 30, 1966;
- (II)

  FRANK CIARMALA, ANTONIO G. FERNANDES,
  VERISSIMO FERNANDES, WILLIAM GULLIVER,
  RUSSELL A. MACDONALD, ROBERT MCKENZIE,
  SILVIO PICCININ AND EDGAR WALLS DID,
  ON JUNE 11, 1965, ENGAGE IN A STRIKE WITHIN
  THE MEANING OF SECTION 1(1)(I) OF THE LABOUR
  RELATIONS ACT AT THE COMMISSION'S LAKEVIEW
  GENERATING STATION PROJECT, AND THAT THEY
  WERE STILL ENGAGED IN THE STRIKE ON THE
  DATE OF THE HEARING OF THIS APPLICATION,
  NAMELY, JUNE 23, 1965;
- (III) THE STRIKE WAS CONTRARY TO THE PROVISIONS OF SECTION 54(1) OF THE LABOUR RELATIONS ACT.

The Board therefore declares, pursuant to section 67 of The Labour Relations Act, that the strike was and is unlawful."

10532-65-U: THE GOODYEAR TIRE AND RUBBER COMPANY LIMITED (APPLICANT) v. LOCAL 232, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (RESPONDENT) (WITHDRAWN).

10533-65-U: THE GOODYEAR TIRE AND RUBBER COMPANY OF CANADA LIMITED (APPLICANT) v. Members of Local 232, United Rubber, Cork, Linoleum and Plastic Workers of America, employed at the applicant's New Toronto Factory Located at 3050 Lakeshore Blvd. West, New Toronto, and the Central Distributing Warehouse Located on Kipling Avenue, South, Toronto 18 (Respondents). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration pursuant to section 67 of the Labour Relations Act that some sixty-two named respondents and other employees of the applicant employed at its factory in New Toronto and at its central distribution warehouse in Etobicoke, for whom Local 232, United Rubber, Cork, Linoleum & Plastic Workers of America is the Bargaining agent, engaged in an unlawful strike.

The Board finds that the employees of the applicant who, in combination or in concert or in accordance with a common understanding, refused to work on one or more of the days between June 14th, 1965 and June 24th, 1965 inclusive, engaged in a strike within the meaning of section 1(1) (1) of The Labour Relations act and that such strike was contrary to section 54(1) of the Labour Relations act.

THE BOARD ACCORDINGLY DECLARES THAT THE EMPLOYEES OF THE APPLICANT EMPLOYED AT ITS FACTORY IN NEW TORONTO AND AT ITS CENTRAL DISTRIBUTING WAREHOUSE IN ETOBICOKE, REFERRED TO IN PARAGRAPH 2, DID, ON ONE OR MORE OF THE DAYS REFERRED TO IN THE SAME PARAGRAPH, ENGAGE IN AN UNLAWFUL STRIKE."

10541-65-U: PROVINCIAL PAPER LIMITED (APPLICANT) V. JAMES BARRON, ET AL (RESPONDENTS) (WITHDRAWN).

## COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

### DURING JUNE

8661-64-U: United Brotherhood of Carpenters and Joiners of America, Local Union 1747, Affiliated with the Carpenters' District Council of Toronto and Vicinity (Complainant) v. Baron Dry Wall (Respondent).

(WRITTEN REASONS).

10096-64-U: BOOT AND SHOE WORKERS! UNION (COMPLAINANT) V. DE CARLO SHOE CO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 224 ).

10151-64-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (COMPLAINANT) v. RAMSAY INDUSTRIES LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The complainant alleges that the aggrieved person Frederick Roberts has been dealt with by the respondent contrary to the Provisions of Section 50 of The Labour Relations Act. More Particularly, the complainant alleges that the foreman of the Job Site, A. Groulx, discharged Roberts on March 16th, 1965 because of his support of the complainant union.

THE EVIDENCE REVEALS THAT THERE WAS A JURISDICTIONAL DISPUTE BETWEEN THE CARPENTERS AND THE PAINTERS UNIONS WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT AND THAT BOTH UNIONS WERE SEEKING THE SUPPORT OF THE EMPLOYEES. ROBERTS WAS ACTIVELY SUPPORTING THE COMPLAINANT UNION. ERNEST PRANKE, THE SENIOR MANAGEMENT OFFICER OF THE RESPONDENT'S OPERATION IN OTTAWA ADMITTED THAT HE WAS AWARE OF ROBERTS SUPPORT OF THE COMPLAINANT UNION BUT THAT IT WAS NOT A CONSIDERATION IN ROBERTS LAY-OFF. PRANKE'S EVIDENCE IS THAT ROBERTS WAS LAID OFF, ALONG WITH OTHER EMPLOYEES, CURING THE LATTER HALF OF MARCH BECAUSE OF A SHORTAGE OF WORK AND MATERIALS.

HAVING REGARD TO ALL THE EVIDENCE THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT THE AGGRIEVED PERSON, FREDERICK ROBERTS WAS DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE COMPLAINT ACCORDINGLY IS DISMISSED. "

10165-64-U: United Packinghouse, Food and Allied Workers (Aomplainant) v. Norfish Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 226).

10212-65-U: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (COMPLAINANT) v. CENTRAL PRECAST PRODUCTS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This a complaint for relief under section 65 of The Labour Relations  $\mathsf{Act}_\bullet$ 

THE COMPLAINANT ALLEGES THAT VITTORIO MAZZUCA AND ANTONIO IANNUCCI WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT BECAUSE OF THEIR ACTIVITY IN PROMOTING THE INTERESTS OF THE TRADE UNION AMONG THE EMPLOYEES OF THE RESPONDENT COMPANY. THE RESPONDENT ALLEGES THAT THE AGRIEVED PERSONS WERE LAID OFF FOLLOWING COMPLETION OF THE ORDER ON WHICH THEY WERE ENGAGED.

THE BOARD FINDS THAT THE RESPONDENT HAD KNOWLEDGE THAT THE AGGRIEVED PERSONS WERE ACTIVE IN PROMOTING THE INTERESTS OF THE UNION. THE BOARD FURTHER FINDS THAT THE AGGRIEVED PERSONS WERE LAID OFF BY THE RESPONDENT, ALTHOUGH JUNIOR EMPLOYEES WERE RETAINED AT WORK PERFORMING JOBS WHICH THE PERSONS AGGRIEVED HAD THEMSELVES PERFORMED IN THE PAST. THE CIRCUMSTANCE THAT THE AGGRIEVED PERSONS HAD COMPLETED THE ORDER ON WHICH THEY HAD BEEN ENGAGED IS NOT PERSUASIVE FOR THESE REASONS:

- (1) The order, it appears, was completed on Saturday April 3rd. The persons aggrieved were not told at that time that they were laid off or about to be laid off. On Sunday, April 4th, they attended a union meeting at which the brother of the owner of the respondent was present. On Monday, April 5th, after they had reported to work, the aggrieved persons were advised that they were laid off. If the lay-off was bona fide, it would have been reasonable for the respondent to have advised the aggrieved persons of it before they left the premises on Friday, April 2nd.
- (2) The aggrieved persons had formerly performed work of a sort which continued to be performed by other employees who remained at work. When the aggrieved persons were recalled to work on April 26th, they were assigned to perform such work. No reason was given which would explain why they were not retained to perform such work at the time they were laid off. The Board further finds that Dino Venier, an owner of the respondent, stated to the aggrieved persons on Monday, April 5th, that because they had brought in the union there would be no work for them for a week or two. In fact, the aggrieved persons were recalled to work on April 26th. Having regard to the above findings, the Board is of the opinion that Vittorio Mazzuca and Antonio lannucci were dealt with by the respondent contrary to section 50 of the Labour Relations Act.

AT THE TIME OF HIS LAY-OFF VITTORIO MAZZUCA WAS WORKING AN AVERAGE OF 60 HOURS PER WEEK AND EARNING \$1.50 PER HOUR. DURING THE PERIOD OF HIS LAY OFF HE WORKED FOR ANOTHER COMPANY FOR A PERIOD OF 36 HOURS AT \$1.85 PER HOUR. HE WOULD NOT HAVE WORKED ON GOOD FRIDAY WHICH FELL DURING THE PERIOD WHEN HE WAS LAID OFF.

AT THE TIME OF HIS LAY-OFF ANTONIO TANNUCCI WAS WORKING AN AVERAGE OF 60 HOURS PER WEEK AND EARNING \$1.65 PER HOUR. DURING THE PERIOD OF HIS LAY-OFF, HE WORKED FOR ANOTHER COMPANY FOR A PERIOD OF 34 HOURS AT \$1.85 PER HOUR. HE WOULD NOT HAVE WORKED ON GOOD FRIDAY.

The Board  $^{\rm 9}\,{\rm S}$  determination of the action to be taken is as follows:-

AS COMPENSATION FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM APRIL 5th, 1965, TO AND INCLUDING APRIL 24th, 1965, THE RESPONDENT SHALL FORTHWITH PAY TO VITTORIO MAZZUCA THE SUM OF \$188.40 AND TO ANTONIO LANNUCCI THE SUM OF \$217.60."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

On the evidence before Me, I do not consider that the complainant has discharged the heavy onus upon it to show that the aggrieved employees were laid off for approximately three weeks contrary to the provisions of section 50(a) of The Labour Relations Act. Accordingly I would have dismissed the complaint."

10267-65-U: International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW) (Complainant) v. Bowltex Limited (Respondent).

10320-65-U: United Steelworkers of America (Complainant) v. Slough Estates (Canada) Ltd. (Respondent).

10384-65-U: International Woodworkers of America (Complainant) v. Pickering Sash and Manufacturing Ltd. (Respondent).

10404-65-U: International Union, United Automobile, Aerospace and Agr.cultural Implement Workers of America (UAW) (Complainant) v. Magnetic Metals of Canada Ltd. (Respondent).

10428-65-U: United Packinghouse Food and Allied Workers (Complainant) v. Stafford Foods Limited (Respondent).

10447-65-U: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. McCord Corporation (Respondent).

10462-65-U: Hotel and Restaurant Employees' and Bartenders' International Union, Local 197 (Complainant) v. Piccardilly House (Respondent).

10465-65-U: United Steelworkers of America (Complainant) v. Beaverton Specialties Limited (Respondent).

10485-65-U: WILLIAM VANAMERONGEN (COMPLAINANT) V. BENNETT AND WRIGHT CONTRACTORS LIMITED (RESPONDENT).

10507-65-U: HOTEL AND RESTAURANT EMPLOYEES UNION LOCAL 743, AFFILIATED WITH HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-C10, CANADIAN LABOUR CONGRESS AND WINDSOR AND DISTRICT LABOUR COUNCIL (COMPLAINANT) v. WELLINGTON TAVERN (RESPONDENT).

10517-65-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC (COMPLAINANT) v. WESTMINISTER HOTEL LIMITED (RESPONDENT).

10580-65-U: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS UNION, LOCAL 351 (COMPLAINANT) v. PARISIAN FABRIC CARE LIMITED (RESPONDENT).

### REFERENCES TO BOARD PURSUANT TO SECTION 79A DISPOSED OF DURING JUNE

10343-65-M: Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America. A.F.L. C.I.O. C.L.C. (Trade Union) v. General Contractors Section of the London Builders Exchange (Employer).

(SEE INDEXED ENDORSEMENT PAGE 229 ).

10363-65-M: BRICKLAYERS AND STONEMASONS UNION No. 5 ONTARIO (TRADE UNION) v. MASONRY CONTRACTORS SECTION OF THE LONDON BUILDERS EXCHANGE (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 233 ).

10367-65-M: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION) v. Dominion Building Materials Limited (Employer).

(SEE INDEXED ENDORSEMENT PAGE 237 ).

# APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10049-64-R: International Union of Operating Engineers (Applicant) v. Canadian Canners Limited, Plant No. 1 (Respondent).

FOLLOWING DISMISSAL OF THIS APPLICATION BY THE BOARD ON MAY 10, 1965, COUNSEL FOR THE APPLICANT, BY LETTER DATED JUNE 2, 1965, REQUESTED THE BOARD TO RECONSIDER ITS DECISION FOR THE FOLLOWING REASONS:

(1) IN ORDER THAT THE APPLICANT MIGHT ADDUCE EVIDENCE
OF PRACTICE WHEREBY PERSONS SUCH AS THOSE INCLUDED IN THIS APPLICATION COULD BE ADMITTED TO MEMBERSHIP IN THE APPLICANT UNION. WE
ARE INSTRUCTED THAT SUCH A PRACTICE DOES IN FACT EXIST AND THE
APPLICANT WISHES TO HAVE THE OPPORTUNITY OF ADDUCING SUCH EVIDENCE.
WHILE WE APPRECIATE THE STATEMENTS MADE IN THE DECISION TO THE
EFFECT THAT SUCH AN OPPORTUNITY WAS AFFORDED THE REPRESENTATIVE
OF THE APPLICANT ON THE SECOND HEARING OF THIS MATTER, THERE
APPEARS TO US TO HAVE BEEN SOME CONFUSION AS BETWEEN THE BOARD
AND THE SAID REPRESENTATIVE IN THIS RESPECT AND IF THE REPRESENTATIVE DID NOT INDICATE SPECIFIC CASES IN WHICH THIS PRACTICE HAS
BEEN ESTABLISHED, WE WISH TO BRING THESE FACTS TO THE ATTENTION
OF THE BOARD. THE DECISION WHICH THE BOARD HAS RENDERED IS NOT
IN ACCORD WITH THE FACTS AS TO PRACTICE AS THEY HAVE BEEN EXPLAINED

TO US IN THE INSTRUCTIONS WE HAVE RECEIVED.

- (2) To clarify the fact situation further we wish to introduce in evidence a statement of the General President of the Applicant as to the jurisdiction of the Applicant in respect to this application and particularly with respect to taking into membership the employees involved. This evidence has been obtained since the decision of May 10th, 1965 in order to avoid the difficulties inherent in the Board's decision of May 10th and to establish the Applicant's right to certification in cases such as this.
- (3) The Board is referred to its decision in Shopmen's Local Union #757 of the International Association of Bridge, Structural and Ornamental Ironworkers (Affiliated with the A.F. of L, C.I.O., C.L.C.) and R.M.P. Industries Limited (File Number 5071-62-R), the facts of which are similar to those in this case. The evidence which the Applicant now wishes to adduce is, in short, for the purpose of endeavouring to persuade the Board that it is entitled to grant certification on the principle of the R.M.P. case and is not bound, on the facts here, to the principles established in the cases referred to in paragraph 6 of the decision of May 10th."

ON JUNE 15, 1965, THE BOARD RENDERED THE FOLLOWING DECISION:

"IN OUR OPINION, THE APPLICANT WAS GIVEN ABUNDANT OPPORTUNITY AT THE SECOND HEARING HELD FOR THAT VERY PURPOSE ON MARCH 31ST, 1965 TO CALL THE EVIDENCE AND PRESENT THE ARGUMENTS WHICH IT NOW ASKS TO ADDUCE BY WAY OF A REQUEST FOR RECONSIDERATION. INDEED, AS INDICATED IN OUR ENDORSEMENT OF MAY 10TH, 1965, THE REPRESENTATIVE FOR THE APPLICANT WAS EXPRESSLY REMINDED BY THE CHAIRMAN ON A NUMBER OF OCCASIONS DURING THE COURSE OF THE HEARING THAT HE WAS ENTITLED TO PRESENT THE KIND OF EVIDENCE AND ARGUMENT WHICH THE APPLICANT NOW REQUESTS THE BOARD TO ENTERTAIN.

IN ALL THE CIRCUMSTANCES, THE BOARD DOES NOT DEEM IT ADVISABLE, ON ANY GROUNDS SET FORTH IN THE APPLICANT'S LETTER OF JUNE 2ND, 1965, TO RECONSIDER ITS DECISION OF MAY 10th, 1965. THE REQUEST FOR RECONSIDERATION MUST, THEREFORE, BE DENIED."

10442-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Paul D'Aoust Construction (Respondent). (GRANTED JUNE 1965).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent has requested the Board to reconsider its decision in this matter dated June 7th, 1965. The document filed in support of the request would appear to have been obtained by the respondent and, in effect, constitutes a vote by open ballot of the

EMPLOYEES AFTER THE BOARD'S DECISION WAS RECEIVED BY THE RESPONDENT. THE BOARD NOTES THAT FOURTEEN NAMES APPEARED ON THE DOCUMENT. THE APPLICANT IN ITS FORM 60 FILED WITH THE BOARD STATED THERE WERE FOURTEEN PERSONS WHO WERE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION AND THAT THE DOCUMENTS (THE NATURE OF WHICH WAS CLEARLY SPELLED OUT IN THE BOARD'S DECISION) SUBMITTED IN SUPPORT OF THE APPLICATION REPRESENTED DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF NINE PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. THE BOARD ACTED ON THIS INFORMATION (AFTER MAKING CERTAIN FURTHER INQUIRIES TO SATISFY ITSELF), THE RESPONDENT HAVING FAILED TO FILE A REPLY OR LIST OF EMPLOYEES OR SPECIMEN SIGNATURES AS REQUIRED BY THE BOARD'S RULES OF PROCEDURE.

BEARING IN MIND THE NATURE AND WORDING OF THE DOCUMENT FILED, ALONG WITH THE SUPPORTING LETTER, THE BOARD HAS NOT CONSTRUED THE ALLEGATIONS OF THE RESPONDENT AS CONSTITUTING A CHARGE OF FRAUD.

IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE FACT THAT THE RESPONDENT HAD EVERY OPPORTUNITY TO MAKE REPRESENTATIONS TO THE BOARD PRIOR TO THE ISSUANCE OF THE DECISION, WE DO NOT DEEM IT ADVISABLE TO RECONSIDER OUR DECISION DATED JUNE 7TH, 1965."

#### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

9964-64-R: Henry Bell Hopkinson (Applicant) v. Lithographers and Photoengravers International Union, Local 12-L (Respondent) v. Metal Closures Canada Limited (Intervener). (DISMISSED MAY 1965).

(RE: METAL CLOSURES CANADA LIMITED, SCARBOROUGH, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT, THROUGH HIS SOLICITORS HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED MAY 31ST, 1965, IN THIS MATTER.

IT SHOULD BE NOTED THAT THE APPLICANT'S SOLICITORS WERE NOT PRESENT AT THE HEARING OF MAY 27th, 1965, BUT THE APPLICANT WAS PERSONALLY PRESENT AND WAS ALSO REPRESENTED BY J. STEELE, AN OFFICER OR REPRESENTATIVE OF PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, Local 466. The positions taken by the applicant's solicitors, in their letters dated June 2nd and June 10th, 1965, are not consistent with the facts as agreed to by the parties at the HEARING OF May 27th, 1965.

AT THE HEARING OF MAY 27TH, 1965 THE PARTIES AGREED, WITHOUT QUALIFICATION, TO EVERY POSITION TAKEN BY THE RESPONDENT IN SUPPORT OF ITS OPPOSITION TO THIS APPLICATION, INCLUDING THE FACT THAT THE APPLICANT WAS NEVER COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER COMPANY, THE FACT THAT HE WAS NOT A LITHOGRAPHER INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AND

THE FACT THAT THE RESPONDENT NEVER PURPORTED TO BARGAIN FOR PERSONS
PERFORMING THE FUNCTIONS OF THE APPLICANT.

IN ADDITION, NO ARGUMENT OR REPRESENTATION WAS MADE BY THE RESPONDENT OR THE INTERVENER AT THE HEARING.

The Board in its decision, dated May 31st, 1965, on the basis of all the evidence before it and in particular upon the agreement of the parties, found that Henry Bell Hopkinson was not an employee in the bargaining unit defined in the collective agreement between the respondent and the intervener and accordingly pursuant to the provisions of section 43 of the Labour Relations act had no status to make this application.

Since the applicant has not alleged that new evidence is now available to him which was not available at the hearing of May 27th, 1965, in this matter and since the Board considered all the evidence before it and the agreement of the parties prior to reaching its decision dated May 31st, 1965, the Board does not therefore consider it advisable to reconsider, vary or revoke its decision of May 31st, 1965, in this matter.

THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED."

#### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

 $\frac{10165-64-U}{\text{Norfish Limited (Respondent)}}.$ 

(SEE INDEXED ENDORSEMENT PAGE 239 ).

## INDEXED ENDORSEMENTS - CERTIFICATION

9251-64-R: United Garment Workers of America Local Union #253 (Applicant) v. Mac Mor Sportswear Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON JULY 18th, 1958, THE APPLICANT WAS CERTIFIED AS THE BARGAINING AGENT FOR THE SAME UNIT OF THE RESPONDENT'S EMPLOYEES AS IT IS APPLYING TO BE CERTIFIED FOR IN THE INSTANT CASE. HOWEVER, SINCE THE DISMISSAL OF AN APPLICATION BY IT FOR CONCILIATION SERVICES SOME 32 YEARS AGO, THE APPLICANT HAS DONE NOTHING WHATEVER TO INDICATE IN ANY WAY THAT IT WAS ASSERTING OR RELYING ON THE BARGAINING RIGHTS WHICH IT ACQUIRED UNDER THIS CERTIFICATE. APPARENTLY, DURING THIS INTERVAL THE BUSINESS OF THE RESPONDENT AS CONTINUED IN OPERATION WITHOUT INTERRUPTION. APART FROM A SUBGESTION THAT AT ONE TIME OF AMOUTHER THE UNION EXPERIENCED

SOME DIFFICULTY IN CONVENING A BARGAINING COMMITTEE, THERE WAS NO EVIDENCE OF THE PRESENCE OF ANY OBSTACLES DURING THIS PERIOD TO PREVENT THE UNION FROM ASSERTING OR EXERCISING ITS BARGAINING RIGHTS. THE BASIS FOR THE PRESENT APPLICATION IS, AS ARGUED BY COUNSEL FOR THE APPLICANT, THAT THE BARGAINING RIGHTS ACQUIRED BY IT UNDER THE CERTIFICATE OF 1958 WERE LOST BY ABANDONMENT.

Counsel, on Behalf of the RESPONDENT, OBJECTS TO THE APPLICATION ON THE GROUNDS THAT THE UNION'S BARGAINING RIGHTS UNDER THE PREVIOUS CERTIFICATE STILL SUBSIST AND THAT. THEREFORE. THE APPLICATION IS UNNECESSARY AND SHOULD NOT BE ENTERTAINED BY THE BOARD. HE ARGUES ALSO THAT A UNION IN THE POSITION AND CIRCUMSTANCES OF THE APPLICANT OUGHT NOT TO BE HEARD TO SAY, IN ORDER TO CLAIM NEW RIGHTS AND ADVANTAGES UNDER A FRESH CERTIFICATE, THAT ITS FAILURE TO EXERCISE THE BARGAINING RIGHTS ACQUIRED BY IT UNDER THE 1958 CERTIFICATE IS PROOF THAT IT HAS ABANDONED THEM. HE CONTENDS THAT BEFORE THE APPLICANT SHOULD BE PERMITTED TO TAKE THIS POSITION, IT SHOULD BE REQUIRED TO TEST THE EXISTENCE OF ITS BARGAINING RIGHTS BY ASSERTING THEIR CONTINUANCE IN AN APPLICATION FOR CONCILIATION SERVICES. HE MAKES IT PLAIN, HOWEVER. THAT HE IS NOT THEREBY TO BE TAKEN TO CONCEDE, HAVING REGARD TO THE LONG DELAY, THAT THE UNION SHOULD BE ENTITLED TO RECEIVE SUCH CONCILIATION SERVICES.

IN OUR OPINION, THE UNION'S FAILURE TO ASSERT OR RELY ON ITS BARGAINING RIGHTS UNDER THE BOARD'S CERTIFICATE OF 1958, IS, IN ALL THE CIRCUMSTANCES, CONSISTENT ONLY WITH THE CONCLUSION THAT IT HAD ABANDONED THOSE RIGHTS PRIOR TO THE INSTITUTION OF THE PRESENT APPLICATION.

While It may be argued that indiscriminate applications of this nature should not be invited, there is plainly no legislative restriction in The Labour Relations act to preclude them. In our opinion, a union which has recently lost its bargaining rights by abandonment is just as entitled to apply for certification as a union which has recently had its bargaining rights terminated under section 45 of the act for its failure to exercise them. It is manifest that the success or otherwise of a union's application for certification does not depend, for purposes of this Board, on its past successes or failures in the exercise of past bargaining rights. The circumstances in the present application are on all fours with those which existed in the Halliday Fuels Limited Case, C.C.H. Canadian Labour Law Reporter, (1955-59) Transfer Binder, ¶16,022.

IN CONSEQUENCE, THE APPLICANT IS ENTITLED TO HAVE THE BOARD ENTERTAIN ITS APPLICATION FOR CERTIFICATION IN THIS CASE."

MR. J.R. HENDERSON EXAMINER WAS SUBSEQUENTLY APPOINTED TO INQUIRE AND REPORT TO THE BOARD.

- "(1) ON THE NATURE OF THE EMPLOYMENT RELATIONSHIP, IF ANY, EXISTING, AS OF AUGUST 28TH, 1964, THE DATE OF THE APPLICATION HEREIN, BETWEEN,
  - (A) THE FOLLOWING EMPLOYEES NAMED IN SCHEDULE A, FILED WITH THE RESPONDENT'S REPLY, NAMELY, A. BOYCHUK, C. DE GRANO, B. EILENBERG, C. ERLICHMAN, M. GELBERT, D. GLICK, M. GOLDBERGER, A. GROSSI, M. MARTINI, L. MAZUE, H. ROHDE, G. SCHIMPF, A. SPINNEY, L. TEPPERMAN, O. TUTTINO, D. VOCELLA, R. VOCELLA, A. WEINBERGER, N. XINOS, AND THE RESPONDENT AND ANY OTHER EMPLOYER; AND
  - (B) THE RESPONDENT OR ANY OTHER EMPLOYER AND ANY OTHER
    EMPLOYEES NOT LISTED IN (A) WORKING AT OR OUT OF
    THAT PORTION OF THE BUILDING LOCATED AT 46 SPADINA
    AVENUE, IN THE CITY OF TORONTO, WHICH IS OCCUPIED OR
    USED BY THE RESPONDENT OR ANY OTHER EMPLOYER ASSOCIATED
    WITH THE RESPONDENT.
  - (2) ON ANY OTHER MATTERS NECESSARILY INCIDENTAL AND RELEVANT TO THE BOARD'S DETERMINATION OF THE FOREGOING."

FOLLOWING THIS APPOINTMENT, THE BOARD RECEIVED A LETTER FROM COUNSEL FOR THE RESPONDENT DATED FEBRUARY 5, 1965 STATING:

"WE REQUEST CLARIFICATION OF THE INSTRUCTIONS TO
MR. HENDERSON IN THIS MATTER. WE ARE PARTICULARLY INTERESTED
TO KNOW IF IT IS INTENDED TO GIVE MR. HENDERSON POWER TO
EXAMINE EMPLOYMENT RECORDS OF COMPANIES, WHICH ARE NOT PARTIES
TO THE APPLICATIONS, AND WHETHER IT IS INTENDED THAT LISTS
OF NAMES OF EMPLOYEES, WHETHER EMPLOYED BY THE RESPONDENT
OR SOME OTHER EMPLOYER, WILL BE MADE FROM SUCH RECORDS. IN
ADDITION, WE REQUEST TO KNOW IF SUCH EXAMINATION IS TO BE
MADE, WHETHER IT IS TO INCLUDE SUPERVISORY EMPLOYEES, OFFICE
STAFF AND OTHERS. FURTHER, WE WISH TO KNOW FOR WHAT PURPOSES
THE ENQUIRY OUTLINED IN SUB-PARAGRAPH (B) IS TO BE MADE."

On February 22, 1965 the Board Rendered the following decision:

"IN VIEW OF THE QUESTIONS RAISED BY THE RESPONDENT AND THE DIFFICULTIES CONFRONTING THE EXAMINER AS TO THE SCOPE AND PURPOSE OF THE INQUIRY DIRECTED IN THE BOARD'S ENDORSEMENT OF JANUARY 25TH, 1965, THE BOARD CONSIDERS IT APPROPRIATE FOR THE GUIDANCE AND CLARIFICATION OF THE PARTIES AND THE EXAMINER TO MAKE THE FOLLOWING ADDITIONAL DIRECTIONS, NAMELY:-

(1) THE GENERAL PURPOSE OF THE INQUIRY IS TO ASCERTAIN THE COMPOSITION OF THE BARGAINING UNIT WITH PARTICULAR REFERENCE TO THE FOLLOWING:-

- (A) THE EMPLOYMENT RELATIONSHIP OF THE PERSONS FOR WHOM THE UNION HAS FILED EVIDENCE OF MEMBERSHIP AND THE NUMBER AND IDENTITY OF ALL OTHER EMPLOYEES IN THE SAME EMPLOYMENT RELATIONSHIP; AND
- (B) THE EMPLOYEES, WHO BECAUSE OF THEIR EMPLOYMENT
  RELATIONSHIP AND DUTIES AND RESPONSIBILITIES SHOULD
  BE INCLUDED IN THE BARGAINING UNIT CLAIMED BY THE
  APPLICANT AND WHICH, IN THE CIRCUMSTANCES, THE BOARD
  WOULD FIND TO BE APPROPRIATE FOR COLLECTIVE
  BARGAINING.
- (2) WHILE THE EXAMINER IS GIVEN GENERAL AUTHORITY TO INQUIRE INTO THE MATTERS DESCRIBED IN THE BOARD'S ENDORSEMENT OF JANUARY 25TH, 1965, IT IS NOT HIS FUNCTION OR PURPOSE TO ASSUME THE CARRIAGE OF AN EXPLORATORY INVESTIGATION AT LARGE INTO THE AFFAIRS OF PERSONS OR CORPORATIONS WHO ARE NOT PARTIES TO THIS APPLICATION FOR THE PURPOSE OF DISCOVERING EVIDENCE WHICH MIGHT TURN OUT TO BE MATERIAL TO THE ISSUES IN THE CASE. IN THE CIRCUMSTANCES. IT IS OUR OPINION THAT APART FROM A PRELIMINARY INVESTIGA-TION OF THE EMPLOYMENT RECORDS OF THE RESPONDENT AND ANY OBVIOUS MATTERS REVEALED THEREIN AS MATERIAL TO THE IDENTITY, NUMBER, EMPLOYMENT RELATIONSHIP AND DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES THERE INDICATED, THE RESPONSIBILITY FOR ADDUCING AND ELICITING EVIDENCE BOTH ORAL AND DOCUMENTARY, INCLUDING THE CALLING AND EXAMINA-TION OF WITNESSES AND PRODUCTION OF DOCUMENTS RELATING TO THE MATTERS IN QUESTION INCLUDING THE EMPLOYMENT RELATIONSHIP AND DUTIES AND RESPONSIBILITIES OF PERSONS WHO MAY BE EMPLOYED BY PERSONS OR COMPANIES NOT PARTIES TO THIS APPLICATION, MUST FALL ENTIRELY UPON THE PARTIES.

In our view, persons who are not parties to this application can only be affected as authorized under the provisions of section 77(2) of the Labour Relations Act. For the purposes of this inquiry, the examiner is hereby authorized, in accordance with subsection (2) (g) of section 77 of the Act, to exercise the powers contained in section 77 (2) (a) and (e)."

10038-64-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. CUTLER-HAMMER CANADA LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"At the hearing of this application on March 9th, 1965 the parties agreed on the bargaining unit which the Board in paragraph 2 of its endorsement dated March 17th, 1965 found to be appropriate for collective bargaining. Paragraph 2 reads as follows:

HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, UNIVERSITY STUDENTS INVOLVED IN IN-PLANT TRAINING PROGRAM AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

IN MAKING HIS REPRESENTATIONS WITH RESPECT TO THE BARGAINING UNIT COUNSEL FOR THE RESPONDENT POINTED OUT THAT THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AS BEING APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT INCLUDED EARL MANCHESTER WHOSE OCCUPATIONAL CLASSIFICATION IS ASSISTANT FOREMAN. THE REPRESENTATIVE OF THE APPLICANT DID NOT CHALLENGE THE INCLUSION OF EARL MANCHESTER IN THE BARGAINING UNIT AT THE HEARING.

BY LETTERS TO THE REGISTRAR DATED MARCH 26TH AND 30TH THE APPLICANT CHALLENGED THE ELIGIBILITY OF EARL MANCHESTER TO CAST A BALLOT IN THE REPRESENTATION VOTE DIRECTED BY THE Board on March 17th, 1965 on the following grounds: (1) "HIS DUTIES AS ASSISTANT FOREMAN WOULD BE IN CONFLICT WITH BARGAINING UNIT EMPLOYEES", (2) "HE IS DIRECTLY RESPONSIBLE TO MANAGEMENT AND THEREFORE COULD NOT BE EXPECTED TO VOTE IN FAVOUR OF THE Union" and (3) "HE WOULD BE THE ONLY NON-HOURLY-RATED EMPLOYEE IN THE BARGAINING UNIT SINCE HE IS ON SALARY". BY LETTER TO THE REGISTRAR DATED MARCH 31st, 1965 COUNSEL FOR THE RESPONDENT SUBMITTED THAT EARL MANCHESTER WAS ENTITLED TO VOTE IN THE REPRESENTATION VOTE AND THAT HE IS NOT EXCLUDED FROM THE BARGAINING UNIT. BY LETTER DATED APRIL 1ST THE REGISTRAR RULED THAT SHOULD EARL MANCHESTER APPEAR AT THE POLL AND REQUEST A BALLOT THAT HE BE GIVEN A SEGREGATED BALLOT PENDING A RULING OF THE BOARD AS TO HIS ELIGIBILITY TO VOTE. THE RETURNING OFFICER ACCORDINGLY SEGREGATED THE BALLOT CAST BY EARL MANCHESTER.

The applicant in its application claimed that a unit of employees excluding foremen and persons above the rank of foreman (and other occupational classifications not here material) was appropriate for collective bargaining. Further, at the hearing of the Board on March 9th, 1965 the representative of the applicant agreed to a unit of employees which excluded foremen and persons above the rank of foreman, even though he was made aware at the hearing that Earl Manchester was on the list of employees filed by the respondent and that his occupational classification was assistant foreman. Having regard to the above circumstances, we are of the opinion that it was incumbent upon the applicant to make any challenge with respect to Earl Manchester at the hearing. We therefore are not prepared to entertain at this time the objections of the applicant raised

IN ITS LETTERS OF MARCH 26TH AND 30TH. WE ACCORDINGLY DECLARE FOR PURPOSES OF CLARITY THAT EARL MANCHESTER IS INCLUDED IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN PARAGRAPH 2 OF THE BOARD'S ENDORSEMENT OF MARCH 17TH, 1965 AND THAT HE WAS ELIGIBLE TO CAST A BALLOT IN THE REPRESENTATION VOTE TAKEN ON APRIL 12TH, 1965.

THERE WERE EIGHTY-FIVE EMPLOYEES ELIGIBLE TO CAST BALLOTS IN THE REPRESENTATION VOTE. EIGHTY-THREE BALLOTS INCLUDING THE BALLOTS OF EARL MANCHESTER, WHICH WAS SEGREGATED AND NOT COUNTED, WERE CAST IN THE VOTE. FORTY-TWO BALLOTS WERE CAST IN FAVOUR OF THE APPLICANT AND FORTY BALLOTS WERE CAST IN OPPOSITION TO THE APPLICANT. THE RESULT OF THE VOTE, THEREFORE, WOULD BE EFFECTED BY THE BALLOT OF EARL MANCHESTER. A DIRECTION TO COUNT HIS BALLOT, HOWEVER, WOULD DESTROY ITS SECRECY. THE BOARD, ACCORDINGLY, FOLLOWING ITS USUAL PRACTICE IN THIS CIRCUMSTANCE, DIRECTS THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DETERMINED IN PARAGRAPH 2 OF THE BOARD'S ENDORSEMENT OF MARCH 17th, 1965. THE BOARD HAVING DECLARED IN PARAGRAPH 3 THAT EARL MANCHESTER IS INCLUDED IN THE BARGAINING UNIT, HE IS ELIGIBLE TO CAST A BALLOT IN THE NEW REPRESENTATION VOTE SUBJECT TO THE PROVISIONS OF PARAGRAPH 5.

By LETTER DATED May 1st, 1965 EARL MANCHESTER WAIVED HIS OBJECTION TO THE BOARD REVEALING THE MANNER IN WHICH HE VOTED AND REQUESTED THAT THE BOARD COUNT HIS BALLOT. BEFORE THE BOARD WOULD BE PREPARED TO ACT ON THIS REQUEST IT WOULD HAVE TO BE SATISFIED THAT MANCHESTER'S LETTER REPRESENTS A VOLUNTARY EXPRESSION OF HIS TRUE WISHES. IN OUR VIEW, EVEN IF THE BOARD CONDUCTED A HEARING FOR THAT PURPOSE, WE CAN ENVISAGE DIFFICULTIES IN MAKING SUCH A DETERMINATION. LET US ASSUME, HOWEVER, FOR PURPOSES OF ARGUMENT THAT THE BOARD DID ACCEPT Manchester's request as a reflection of his true desires and COUNTED HIS BALLOT. IN OUR OPINION, IN ANY SUBSEQUENT PROCEEDING WHERE THE COUNTING OF A SEGREGATED BALLOT WOULD DETERMINE THE OUTCOME OF A REPRESENTATION VOTE, THE PERSON WHOSE BALLOT HAD NOT BEEN COUNTED MIGHT WELL BE SUBJECT TO PRESSURES AND UNDUE INFLUENCE BY ONE OF THE PARTIES TO THE VOTE TO HAVE HIM REQUEST THAT HIS BALLOT BE COUNTED. HAVING REGARD TO THE UNACCEPTABLE CONSEQUENCES WHICH WE BELIEVE COULD REASONABLY BE ANTICIPATED IN FUTURE SITUATIONS OF A SIMILAR NATURE IF THE BOARD ACCEDED TO MANCHESTER'S REQUEST IN THE INSTANT CASE, THE BOARD IS NOT PREPARED TO COUNT HIS BALLOT.

The Board accordingly directs that the representation vote be held in accordance with the terms of its endorsement dated April 23rd, 1965."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

" DISSENT.

IN VIEW OF EARL MANCHESTER'S LETTER OF MAY 1ST, 1965, IN WHICH HE STATES THAT "THE PEOPLE AT OUR PLANT ARE AWARE OF HOW I FEEL ABOUT THIS VOTING" IT IS CLEAR THAT THERE IS NO LONGER ANY SECRECY TO BE PRESERVED WITH RESPECT TO HIS BALLOT. ACCORDINGLY, IN ALL THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE DIRECTED THAT EARL MANCHESTER'S BALLOT BE COUNTED IN THE REPRESENTATION VOTE TAKEN ON APRIL 12TH, 1965."

10102-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. McCord Corporation (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION.

THE RESPONDENT WAS REPRESENTED AT THE HEARING BY
TWO PERSONS, ONE OF WHOM WAS THE RESPONDENT S PLANT MANAGER.

THE RESPONDENT MOVED THAT THE HEARING BE ADJOURNED BECAUSE THE RESPONDENT'S INDUSTRIAL RELATIONS DIRECTOR AND HIS ASSISTANT HAD PLANNED TO ATTEND THE HEARING, HOWEVER, THEIR PLANE FLIGHT FROM WINDSOR WHICH WAS SCHEDULED TO LEAVE AT 7:20 A.M. ON THE MORNING OF THE HEARING HAD BEEN CANCELLED BECAUSE OF THE WEATHER. THE RESPONDENT'S MOTION FOR ADJOURNMENT WAS STRENUOUSLY OPPOSED BY THE APPLICANT.

DURING THE COURSE OF THE BOARD'S INQUIRY INTO THE MERITS OF THE MOTION FOR THE ADJOURNMENT IT BECAME APPARENT THAT THE RESPONDENT HAD ONLY RECENTLY ESTABLISHED ITS OPERATIONS IN ORANGEVILLE. WHEN ONE OF THE BOARD'S MEMBERS ASKED THE RESPONDENT WHETHER THE ORANGEVILLE PLANT WAS A NEW PLANT, THE RESPONDENT'S REPRESENTATIVE REPLIED THAT THE PLANT HAD BEEN IN OPERATION FOR A PERIOD OF ABOUT 3 MONTHS AND THAT THE PLANT HAD "HARDLY GOT GOING". THE RESPONDENT'S REPRESENTATIVE FURTHER STATED THAT THE 71 EMPLOYEES CURRENTLY EMPLOYED BY THE RESPONDENT REPRESENTED ONLY ABOUT 1/3 OF THE TOTAL ANTICIPATED COMPLEMENT OF EMPLOYEES. IT WOULD APPEAR THAT THE PLANT WOULD NOT BE FULLY STAFFED UNTIL SEPTEMBER. 1965. AT WHICH TIME THE RESPONDENT WOULD EMPLOY BETWEEN 175 AND 200 EMPLOYEES. BY THE END OF MAY NEXT, APPROXIMATELY 50 ADDITIONAL EMPLOYEES WOULD BE HIRED. THE RESPONDENT'S REPRESENTATIVE FURTHER STATED THAT THERE IS A DEFINITELY SCHEDULED PLAN FOR AN INCREASE IN THE WORK FORCE OF THE RESPONDENT. AS THE NEW EQUIPMENT WHICH IS ON ORDER IS DELIVERED AND INSTALLED, NEW STAFF MUST BE HIRED AND TRAINED TO OPERATE THE EQUIPMENT. THE RESPONDENT HAS PRODUCTION COMMITMENTS TO FULFIL AND THIS REQUIRES THE RESPONDENT TO ADHERE TO ITS SCHEDULED PROGRAM OF BUILD-UP. IF THE 50 NEW EMPLOYEES ARE HIRED BETWEEN THE DATE OF THE HEARING AND THE END OF MAY, THE RESPONDENT WILL THEN HAVE EMPLOYED MORE THAN FIFTY PER CENT OF ITS TOTAL ANTICIPATED COMPLEMENT OF EMPLOYEES.

THE APPLICANT ARGUED THAT SINCE NO REFERENCE WAS MADE
TO THE BUILD-UP SITUATION OR THE TIMELINESS OF THIS APPLICATION,
BY THE RESPONDENT IN ITS REPLY, THE BOARD, PURSUANT TO THE PROVISIONS
OF SECTION 47 OF THE BOARD'S KULES OF PROCEDURE, SHOULD GIVE NO
EFFECT TO THE EVIDENCE OF BUILD-UP.

SECTION 47 OF THE BOARD'S RULES OF PROCEDURE CONTEMPLATES THAT THE BOARD MAY PERMIT SUCH EVIDENCE TO BE ADDUCED "UPON SUCH TERMS AND CONDITIONS AS THE BOARD THINK ADVISABLE". THE OBVIOUS TERM OR CONDITION WHICH THE BOARD WOULD IMPOSE IN THE CIRCUMSTANCES OF THIS CASE WOULD HAVE BEEN TO GRANT THE APPLICANT AN ADJOURNMENT IN ORDER THAT THE APPLICANT BE GIVEN AN OPPORTUNITY TO PREPARE ITSELF TO MEET THE ALLEGATIONS WHICH MIGHT AFFECT THE TIMELINESS OF THIS APPLICATION. IN THIS CASE, HOWEVER, THE APPLICANT OPPOSED THE RESPONDENT'S MOTION FOR ADJOURNMENT OF THE HEARING.

THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT OF THIS APPLICATION IS DENIED. IF SOME OF THE RESPONDENT'S REPRESENTATIVES CHOSE TO WAIT UNTIL THE MORNING OF THE HEARING TO ATTEMPT TO FLY TO TORONTO, THEY MUST ACCEPT THE RESPONSIBILITY FOR ANY FLIGHT CANCELLATIONS WHICH ENSUE. THE CHOICE OF TRANSPORTATION WAS IN THEIR HANDS AND THE APPLICANT SHOULD NOT NOW BE FORCED TO SUFFER FROM THE CONSEQUENCES OF THAT CHOICE.

IT APPEARS FROM ALL THE EVIDENCE BEFORE US, WHICH
WAS IN NO WAY CHALLENGED OR REFUTED BY THE APPLICANT, THAT THE
RESPONDENT IS OPERATING A NEW PLANT AND IS ENGAGED IN A REGULARLY
SCHEDULED BUILD-UP OF EMPLOYEES. SINCE CONSIDERABLY LESS THAN
FIFTY PER CENT OF THE TOTAL ANTICIPATED COMPLEMENT OF EMPLOYEES
WERE EMPLOYED AT THE TIME THIS APPLICATION WAS MADE, THIS APPLICATION ACCORDINGLY APPEARS TO BE PREMATURE.

As was stated in the EMIL Frant and Peter Waselovich Case (1957) C.C.H. Canadian Labour Law Reporter, Transfer Binder \$\frac{1}{55}-\frac{1}{59}\$, \$\pi16,057\$, C.L.S. 76-539, the Board is faced with the task of balancing the right of persons presently employed to collective bargaining and the right of future employees to select a bargaining agent of their own choice. The considerations which the Board has taken into account in making its determination are set forth in the above decision as follows:

FACED WITH THIS CONFLICT OF INTERESTS,
THE BOARD HAS, IN THE PAST IN SOME CASES,
REFUSED TO CERTIFY OR ORDER AN IMMEDIATE VOTE—
AND HAS DIRECTED THAT A VOTE BE TAKEN AT A LATER
DATE—WHERE, ON ALL THE EVIDENCE, IT APPEARED TO
THE SATISFACTION OF THE BOARD THAT THE EMPLOYEES
DID NOT CONSTITUTE A SUBSTANTIAL AND REPRESENTATIVE
SEGMENT OF THE WORK FORCE TO BE EMPLOYED. OF COURSE
IN SUCH CASES IT MUST BE ESTABLISHED THAT THERE IS A

REAL LIKELIHOOD THAT THE INCREASE IN THE WORK FORCE
WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME
AND, IF IT APPEARS THAT THE BUILD-UP DEPENDS ON
FACTORS BEYOND THE CONTROL OF THE EMPLOYER SUCH AS
THE SALEABILITY OF PRODUCTS, THE PRESENCE OF
SUFFICIENT WORKERS OR THE AVAILABILITY OF MATERIALS
FOR, SAY, THE PURPOSE OF PLANT EXPANSION, THE BOARD,
INSTEAD OF DIRECTING A VOTE TO BE HELD IN THE FUTURE
MAY CERTIFY OR ORDER AN IMMEDIATE VOTE DEPENDING ON
THE MEMBERSHIP POSITION OF THE APPLICANT.

HAVING REGARD TO THE EVIDENCE BEFORE US WITH RESPECT TO BUILD-UP AND TO THE PRINCIPLES ENUNCIATED BY THE BOARD IN THE EMIL FRANT AND PETER WASELOVICH CASE, WE ARE SATISFIED THAT THE RESPONDENT HAS A PLANNED PROGRAM FOR THE INCREASE IN ITS WORK FORCE AND THAT THERE IS A REAL LIKELIHOOD THAT THE INCREASE WILL TAKE PLACE IN THE SPECIFIED PERIOD. SO AS TO KEEP THE BOARD INFORMED OF THE PROGRESS OF THE RESPONDENT'S BUILD-UP PROGRAM, WE DIRECT THAT THE RESPONDENT REPORT TO THE BOARD ON THE NUMBER OF PERSONS IN ITS EMPLOY IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING ON THE FOLLOWING DATES: MAY 1ST, MAY 15TH AND MAY 29TH. 1965.

IF THE BUILD-UP DOES NOT PROGRES AS ALLEGED BY
THE RESPONDENT WITHIN THE TIME SPECIFIED, THE BOARD WILL CONSIDER
THE MEMBERSHIP POSITION OF THE APPLICANT AS OF THE DATE THIS
APPLICATION WAS MADE. HOWEVER, IF THE BUILD-UP PROCEEDS ACCORDING
TO SCHEDULE, THE BOARD WILL DIRECT A REPRESENTATION VOTE WHEN THE
BOARD IS SATISFIED THAT MORE THAN FIFTY PER CENT OF THE ANTICIPATED
COMPLEMENT OF EMPLOYEES IS EMPLOYED BY THE RESPONDENT."

BOARD MEMBER G. RUSSELL HARVEY SAID:-

"I concur with MY colleagues in the result, but I would not take into consideration the circumstances relating to a build-up beyond the 50 new employees and the target date of May."

10141-64-R: Local Union 804, International Brotherhood of Ele Trical Workers AFL-C10-CLC (Applicant) v. Ontario Water Resources Commission Respondent).

The Board endorsed the Record as follows:-

"The preliminary issue for determination in this case is whether or not the respondent, the Ontario Water Resources Commission, is an agency of Her Majesty in the right of the Province of Ontario. Section 11 of the Interpretation Act, R.S.O. 1960, c. 191, provides that no Act affects the Crown unless it is expressly stated therein that the Crown is bound by it. The Labour Relations Act, of course, does not contain any express provision which makes the Act applicable to the Crown.

If the finding of the Board, therefore, is that the Commission is an agency of the Crown, then it is not subject to The Labour Relations Act.

IN SUPPORT OF HIS CONTENTION THAT THE COMMISSION IS A CROWN AGENCY, COUNSEL FOR THE COMMISSION ARGUES AS FOLLOWS:-

- (A) SECTION 3(1) AND 51 OF THE ONTARIO WATER RESOURCES COMMISSION ACT, R.S.O. 1960, c. 281 MUST BE INTERPRETED AS EXPRESSLY DENOTING AN INTENTION ON THE PART OF THE LEGISLATURE TO CONSTITUTE THE COMMISSION AN AGENCY OF THE CROWN. THESE SECTIONS PROVIDE:-
  - 3(1) THE ONTARIO WATER RESOURCES COMMISSION
    CONSTITUTED A CORPORATION WITHOUT SHARE
    CAPITAL ON BEHALF OF HER MAJESTY IN RIGHT
    OF ONTARIO BY THE ONTARIO WATER RESOURCES
    COMMISSION ACT, 1956 IS CONTINUED AND
    SHALL BE COMPOSED OF NOT FEWER THAN THREE
    AND NOT MORE THAN SEVEN PERSONS AS THE
    LIEUTENANT GOVERNOR IN COUNCIL FROM TIME
    TO TIME DETERMINES.
    - 51. NOTWITHSTANDING THE CROWN AGENCY ACT, WHERE A SEWAGE WORKS IS CONSTRUCTED WITH THE ASSISTANCE OF A LOAN MADE UNDER PART VIB OF THE NATIONAL HOUSING ACT, 1954 (CANADA), THE COMMISSION, IN ADDITION TO EXERCISING ITS POWERS AS AN AGENT OF HER MAJESTY, MAY EXERCISE ITS POWERS UNDER THIS ACT IN CONNECTION WITH SUCH SEWAGE WORKS AS AN AGENT OF ONE OR MORE MUNICIPALITIES.
  - (B) THE KIND AND EXTENT OF THE PUBLIC FUNCTIONS PERFORMED BY IT AND THE CLOSE CONTROL AND SUPERVISION WHICH THE CROWN MAINTAINS OVER ESSENTIAL ASPECTS OF THE COMMISSION'S ADMINISTRATION AND OPERATIONS UNDER THE ONTARIO WATER RESOURCES COMMISSION ACT CLEARLY GIVE IT THE CHARACTER OF A CROWN AGENCY UNDER THE CROWN AGENCY ACT, R.S.O. 1960, c. 81. THE RELEVANT PROVISIONS OF THE CROWN AGENCY ACT STATE:-
    - 1. In this Act, "Crown agency" means a board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by Her Majesty in right of Ontario, or by the Government of Ontario, or under the authority of the Legislature or the Lieutenant Governor in Council.

2. A CROWN AGENCY IS FOR ALL ITS PURPOSES AN AGENT OF HER MAJESTY AND ITS POWERS MAY BE EXERCISED ONLY AS AN AGENT OF HER MAJESTY.

Counsel for the Applicant, on the other hand argues:-

- (A) THE WORDS "ON BEHALF OF HER MAJESTY" CONTAINED IN SECTION 3(1) OF THE ONTARIO WATER RESOURCES COMMISSION ACT OUGHT NOT, WHEN CONSTRUED IN THE CONTEXT IN WHICH THEY APPEAR, TO BE TAKEN TO MEAN "AS AN AGENCY OF HER MAJESTY". THE FACT THAT A BOARD OR COMMISSION, BEING A PUBLIC AUTHORITY, IS CREATED BY OR FOR THE CROWN DOES NOT THEREBY MAKE IT A CROWN AGENCY. ALL PUBLIC AUTHORITIES ARE IN A SENSE CREATED BY AND FOR THE CROWN. IT IS OBVIOUS, HOWEVER, THAT THEY ARE NOT ALL CREATED CROWN AGENCIES; SOMETHING MORE MUST THEREFORE, BE PRESENT TO ESTABLISH THE RELATIONSHIP OF PRINCIPAL AND AGENT THAN THE WORDS "ON BEHALF OF".
- (B) CONTRARY TO THE POSITION TAKEN BY COUNSEL FOR THE COMMISSION, THE LANGUAGE OF SECTION 51 OF THE ONTARIO WATER RESOURCES COMMISSION ACT MUST BE INTERPRETED AS AN EXPRESS STATEMENT BY THE LEGISLATURE THAT THE COMMISSION IS NOT A CROWN AGENCY. WHEN THIS SECTION IS READ WITH SECTION 2 OF THE CROWN AGENCY ACT. THE NATIONAL HOUSING ACT OF 1954 AND AMENDMENTS THERETO AND WITH THOSE SECTIONS OF THE WATER RESOURCES COMMISSION ACT WHICH EMPOWER THE COMMISSION TO CONSTRUCT SEWAGE WORKS FINANCED BY N.H.A. FUNDS FOR A MUNICIPALITY, THE PURPOSE OF THE SECTION IS MANIFEST, I.E. TO CONSTITUTE THE COMMISSION, WHICH IS ALREADY AN AGENT OF THE MUNICIPALITY IN RESPECT TO THE CONSTRUCTION OF THESE WORKS, AN AGENT OF THE CROWN IN ORDER TO ENABLE IT TO RECEIVE THE N.H.A. FUNDS. ON THIS BASIS. HE CONTENDS THAT IT WAS NECESSARY FOR THE COMMISSION TO BE MADE AN AGENCY OF THE CROWN FOR THE LIMITED PURPOSES OF MAKING AGREEMENTS AS AN AGENCY OF THE PROVINCIAL GOVERNMENT. WITH THE CENTRAL MORTGAGE AND HOUSING CORPORATION FOR THE ADVANCEMENT OF N.H.A. FUNDS TO CONSTRUCT SEWAGE WORKS.
- (C) WHILE THE FUNCTIONS PERFORMED BY THE COMMISSION ARE OF A PUBLIC NATURE AND PURPOSE, THEY DO NOT FALL WITHIN THE CATEGORY OF FUNCTIONS TRADITIONALLY REGARDED AS WITHIN THE PROVINCE OF THE CROWN.

  FURTHER THE SUPERVISION MAINTAINED BY THE CROWN OVER THE COMMISSION IS NOT SUCH AS TO CONSTITUTE THE KIND AND DEGREE OF CONTROL ENVISAGED BY THE CROWN AGENCY ACT AS NECESSARY TO MAKE THE COMMISSION A CROWN AGENCY.

PART VIB OF THE NATIONAL HOUSING ACT MAKES PROVISION FOR LOANS FOR MUNICIPAL SEWAGE TREATMENT PROJECT. SECTION 36F(1) OF THAT ACT PROVIDES THAT THE CENTRAL MORTGAGE AND HOUSING CORPORATION

MAY, WITH THE APPROVAL OF THE GOVERNOR IN COUNCIL,
MAKE A LOAN TO A MUNICIPALITY — FOR THE PURPOSE
OF ASSISTING IN THE CONSTRUCTING OR EXPANSION
OF A SEWAGE TREATMENT PROJECT.

WE ARE NOT PERSUADED, AS ARGUED BY COUNSEL FOR THE APPLICANT, THAT THE PURPOSE OF SECTION 51 OF THE ONTARIO WATER RESOURCES COMMISSION ACT WAS TO CONSTITUTE THE COMMISSION AN AGENT OF THE CROWN IN ORDER TO ENABLE IT TO RECEIVE N.H.A. MONIES FOR SEWER CONSTRUCTION PROJECTS WHICH IT HAD UNDERTAKEN ON BEHALF OF A MUNICIPALITY. ACCORDING TO OUR UNDERSTANDING OF THE RELEVANT PROVISIONS OF PART VIB OF THE NATIONAL HOUSING ACT. A MUNICIPALITY ITSELF CAN MAKE AGREEMENTS WITH THE CENTRAL MORTGAGE AND HOUSING CORPORATION FOR THE ADVANCEMENT OF AND RECEIPT OF FUNDS FROM THAT CORPORATION TO ASSIST IN THE CONSTRUCTION OF SEWAGE WORKS. SECTION 2 OF THE CROWN AGENCY ACT QUOTED ABOVE PROVIDES THAT A CROWN AGENCY IS FOR ALL OF ITS PURPOSES AN AGENT OF HER MAJESTY AND ITS POWERS MAY BE EXERCISED ONLY AS AN AGENT OF HER MAJESTY. SECTION 39 OF THE ONTARIO WATER RESOURCES COMMISSION ACT EMPOWERS THE COMMISSION TO CONSTRUCT SEWER WORKS FOR A MUNICIPALITY. IF WE ASSUME THAT THE COMMISSION IS A CROWN AGENCY THEN, UNLESS A STATUTORY EXCEPTION IS CREATED TO SECTION 2 OF THE CROWN AGENCY ACT. AND THE COMMISSION IS AUTHORIZED TO DO SO, IT COULD NOT, WHEN CONSTRUCTING A SEWER WORKS, ACT OUTSIDE OF ITS POWERS AS A CROWN AGENCY, E.G. AS AN AGENCY OF THE MUNICIPALITY.

IN OUR OPINION, THE PRECISE WORDING OF SECTION 51 OF THE ONTARIO WATER RESOURCES COMMISSION ACT IS OF PARTICULAR SIGNIFICANCE IN CONSTRUING ITS MEANING. THE WORDS ARE "Notwithstanding The Crown Agency Act, where a sewage works is CONSTRUCTED WITH THE ASSISTANCE OF A LOAN MADE UNDER PART VIB OF THE NATIONAL HOUSING ACT - - THE COMMISSION, IN ADDITION TO EXERCISING ITS POWERS AS AN AGENT OF HER MAJESTY, MAY EXERCISE ITS POWERS UNDER THIS ACT IN CONNECTION WITH SUCH SEWAGE WORKS AS AN AGENT OF ONE OR MORE MUNICIPALITIES". On our reading of the National Housing Act there would seem to BE NO NECESSITY FOR THE COMMISSION TO BE A CROWN AGENCY IN ORDER TO ENABLE IT TO RECEIVE N.H.A. FUNDS FOR THE PURPOSE OF THAT ACT. ACCORDING TO OUR UNDERSTANDING OF THE MATTER, IT COULD RECEIVE THESE FUNDS AS AGENT OF A MUNICIPALITY. IT SEEMS MORE IN HARMONY WITH THE LANGUAGE AND APPARENT INTENT OF SECTION 51 OF THE ONTARIO WATER RESOURCES COMMISSION ACT THAT THE SECTION MEANS TO EXCEPT THE COMMISSION WHEN IT IS CONSTRUCTING SEWER WORKS WITH THE ASSISTANCE OF NoH.A. FUNDS FOR A MUNICIPALITY

FROM THE DISABILITIES IMPOSED ON A CROWN AGENCY BY SECTION 2 OF THE CROWN AGENCY ACT. IN OUR VIEW. THE WORDS "NOTWITHSTANDING THE CROWN AGENCY ACT" AND "IN ADDITION TO EXERCISING ITS POWERS AS AN AGENT OF HER MAJESTY" CONSTITUTE A PLAIN AND UNEQUIVOCAL DECLARATION OF THE STATUS OF THE COMMISSION AS A CROWN AGENCY. WE ARE UNABLE TO APPRECIATE ANY OTHER REASON FOR THE PRESENCE OF THESE WORDS IN THE SECTION BUT TO INDICATE THAT WHILE THE COMMISSION IS A CROWN AGENCY IT CAN STILL, FOR THE LIMITED PURPOSE DESCRIBED, ACT AS AN AGENT FOR A MUNICIPALITY. THIS CONCLUSION IS, WE BELIEVE, FORTIFIED BY THE LANGUAGE OF SECTION 3(1) OF THE SAME ACT QUOTED ABOVE. HAVING REACHED THE CONCLUSION THAT THE ONTARIO WATER RESOURCES COMMISSION ACT EXPRESSLY DESIGNATES THE COMMISSION A CROWN AGENCY. IT IS. OF COURSE, UNNECESSARY FOR US TO CONSIDER WHETHER, IN THE ABSENCE OF THIS EXPRESS DESIGNATION, WE WOULD HAVE FOUND THE COMMISSION A CROWN AGENCY BY VIRTUE OF CONTROL EXERCISED OVER IT BY THE CROWN.

AS OUR FINDING IS THAT THE ONTARIO WATER RESOURCES
COMMISSION IS A CROWN AGENCY THIS APPLICATION MUST BE DISMISSED."

10183-64-R: Wood, Wire and Metal Lather's International Union, Local 97 (APPLICANT) v. E and M. Lathing (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant has filed a duly completed Form 59, Statement on Status of Trade Union, Construction Industry. The Board finds that the applicant is a trade union within the meaning of section  $1(1)(\mathbf{J})$  of the Labour Relations Act.

THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING EIGHT NAMES ON SCHEDULE A AND ONE NAME ON SCHEDULE C AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE EIGHT PERSONS IN THE BARGAINING UNIT.

The applicant filed four applications for membership accompanied by receipts. The applications are signed by the employees and the receipts are countersigned and indicate that a payment of at least \$1.00 has been made within the six month period immediately preceding the terminal date of the application. The money was collected by one person. The applicant filed a duly completed Form 60, Declaration Concerning Membership Documents, Construction Industry.

AFTER THE TERMINAL DATE THE UNION REQUESTED THE BOARD TO TRANSFER CERTAIN MEMBERSHIP EVIDENCE FROM OTHER CASES PENDING BEFORE THE BOARD TO THE PRESENT CASE. WE HAVE CAREFULLY CONSIDERED THIS REQUEST AND HAVE COME TO THE CONCLUSION THAT IT MUST BE DENIED.

In the first place the Form 60, Declaration Concerning Membership Documents, Construction Industry, which under section 69 of the Rules of Procedure must be filed not later than the terminal date of the application does not cover the membership evidence which the applicant seeks to have transferred to this case. In a number of cases the Board has refused to accept additional membership evidence filed prior to the terminal date but subsequent to the filing of the Form 9 or Form 60 as the case may be. If additional membership evidence is filed after the filing of a Form 9 or Form 60 it must be accompanied by a new Declaration Concerning Membership Documents. Even if another Form 60 could be filed at this stage of the proceedings in this case, none was filed.

Secondly, section 50 of the Rules of Procedure provides that such evidence shall not be accepted by the Board. That rule provides in subsection (1):

"EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTIONS BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES, AS THE CASE MAY BE, AND

- (A) IS ACCOMPANIED BY A RETURN MAILING
  ADDRESS AND THE NAME OF THE EMPLOYER;
  AND
- (B) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.

Since the inception of this Rule in 1960 it has been the practice of the Board to insist on strict compliance with its terms. When the rule speaks of "an application for certification" or "the terminal date for the application" it is our view that these words do not envisage any application in which evidence may have been filed but a particular application.

TO TRANSFER IN THE PRESENT CASE WAS ON FILE WITH THE BOARD IT WAS NOT ON FILE IN THIS APPLICATION NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION. THE RELIANCE TOOL DIE CASTING, LTD. CASE, BOARD FILE # 10097-64-R, IS DISTINGUISHABLE BECAUSE IN THAT CASE THE EVIDENCE IN QUESTION WAS ON FILE WITH THE BOARD IN CONNECTION WITH THAT APPLICATION AND NO OTHER APPLICATION. OF COURSE IF THE REQUEST IN THE PRESENT CASE HAD BEEN RECEIVED BY THE TERMINAL DATE NO QUESTION WOULD ARISE BECAUSE THE TRANSFER COULD BE MADE AND THE EVIDENCE FILED WITH THE BOARD IN A PARTICULAR APPLICATION WITHIN THE TIME PRESCRIBED BY SECTION 50 OF THE RULES.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY—FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"I DISSENT. I WOULD HAVE TRANSFERRED THE MEMBERSHIP
EVIDENCE AS REQUESTED BY THE APPLICANT ON THE GROUND THAT IT WAS
ON FILE WITH THE BOARD PRIOR TO THE TERMINAL DATE AND, FURTHER,
WAS SUPPORTED BY FORMS 60 IN THE PARTICULAR CASES IN WHICH THE
EVIDENCE WAS ORIGINALLY FILED. TO HOLD OTHERWISE WOULD IN MY
OPINION UNDULY PENALIZE A TRADE UNION WHICH HAS NO SURE WAY OF
ASCERTAINING ALL THE EMPLOYEES OF A PARTICULAR EMPLOYER."

10269-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. EASTLAKE EQUIPMENT COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 419, WAREHOUSEMEN AND MISCELLANEOUS DRIVERS (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT APPLIES FOR CERTIFICATION AS BARGAINING
AGENT FOR ALL STATIONARY ENGINEERS, REFRIGERATION OPERATORS AND
HELPERS EMPLOYED IN THE OPERATION AND MAINTENANCE OF THE REFRIGERATION PLANT OF THE RESPONDENT AT WESTON, SAVE AND EXCEPT CHIEF
ENGINEER AND THOSE ABOVE THE RANK OF CHIEF ENGINEER.

On June 28th, 1962, the intervener was certified by the Board as bargaining agent for all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the Rank of Foreman, and office staff. The persons with respect to whom bargaining rights are now sought are members of this bargaining unit and the intervener is now their bargaining agent.

IN ITS INTERVENTION THE INTERVENER STATED.

"The intervener waives any claim to the Jurisdiction of the Stationery Engineers, Refrigeration operators and Helpers employed in the operation and maintenance of the Refrigeration Plant equipment, to the Canadian Union of Operating Engineers Local 101 and we do not desire a hearing in this matter."

IN EFFECT, THE INTERVENER HAS INDICATED THAT IT IS WILLING TO ABANDON ITS BARGAINING RIGHTS WITH RESPECT TO A PORTION OF THE UNIT FOR WHICH IT HAS BEEN CERTIFIED AS BARGAINING AGENT. THERE HAS BEEN NO COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE INTERVENER AND THE RESPONDENT, AND THE UNIT OF EMPLOYEES FOR WHICH THE INTERVENER IS BARGAINING AGENT REMAINS THE UNIT FOR WHICH IT WAS CERTIFIED BY THIS BOARD. IT IS NOT OPEN TO A TRADE UNION UNILATERALLY TO ALTER A BARGAINING UNIT WHICH THE BOARD HAS FOUND TO BE APPROPRIATE. NEITHER CAN IT BE SAID — NOR WAS IT ARGUED — THAT THE INTERVENER HAS ENTIRELY ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO A UNIT OF EMPLOYEES FOR WHICH IT WAS CERTIFIED.

The only provision in The Labour Relations Act under which an application for certification may be brought where no collective agreement is in effect, as is the case here, is contained in section 5(1) of the Act. By that section the application can only be brought "where no trade union has been certified as bargaining agent of the employees of an employer in a unit that the trade union claims to be appropriate for collective bargaining". Clearly the present application does not come within this provision and is untimely.

THE APPLICATION ACCORDINGLY IS DISMISSED."

10434-65-R: United Packinghouse Food & Allied Workers (Applicant) v. Supersweet Formula Feeds, Division of Robin Hood Flour Mills Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT APPLIES FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES IN THE RESPONDENT'S MILL AT MILTON, ONTARIO.

Counsel for the respondent takes the position that the Board is without jurisdiction inasmuch as the nature of the employer's operation is such as to bring it in matters relating to labour relations exclusively within the jurisdiction of the Parliament of Canada. In particular counsel for the respondent relies on the provisions of the Industrial Relations & Disputes investigation Act, 1952 R.S.C. Ch. 152; The Canadian Wheat Board Act, 1952 R.S.C. Ch. 44, as amended 1952-53 C. 26, 1957 C. 6 and 1962, C. 21; and the Canada Grain Act, 1952 R.S.C. Ch. 25, 308, as amended 1955 C. 9, 1962 C. 25 and 1963 C. 41.

Section 45 of the Canadian Wheat Board Act R.S.C. 1952 Ch. 44 is as follows:-

FOR GREATER CERTAINTY, BUT NOT SO AS TO RESTRICT THE GENERALITY OF ANY DECLARATION IN THE CANADA GRAIN ACT THAT ANY ELEVATOR IS A WORK FOR THE GENERAL ADVANTAGE OF CANADA, IT IS HEREBY DECLARED THAT ALL FLOUR MILLS, FEED MILLS, FEED WAREHOUSES AND SEED CLEANING MILLS, WHETHER HERETOFORE CONSTRUCTED OR HEREAFTER TO BE CONSTRUCTED, ARE AND EACH OF THEM IS HEREBY DECLARED TO BE WORKS OR A WORK FOR THE GENERAL ADVANTAGE OF CANADA, AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH AND EVERY MILL OR WAREHOUSE MENTIONED OR DESCRIBED IN THE SCHEDULE IS A WORK FOR THE GENERAL ADVANTAGE OF CANADA.

IT IS NOT CONTESTED THAT THE RESPONDENT'S MILL IS A FEED MILL AND IT IS CLEAR, THEREFORE, THAT IT COMES WITHIN THE SCOPE OF THE DECLARATION CONTAINED IN SECTION 45 OF THE CANADIAN WHEAT BOARD ACT. THIS MILL HAVING BEEN DECLARED TO BE A WORK FOR THE GENERAL ADVANTAGE OF CANADA, THIS BOARD IS WITHOUT JURISDICTION IN THE PRESENT APPLICATION. COUNSEL FOR THE APPLICANT ARGUES THAT THE DECLARATION ITSELF WAS ULTRA VIRES THE PARLIAMENT OF CANADA. WHILE THE BOARD MUST ALWAYS DETERMINE WHETHER OR NOT IT HAS JURISDICTION TO ENTERTAIN THE APPLICATION BEFORE IT, IN OUR OPINION WHERE PARLIAMENT HAS ENACTED A DECLARATION THAT A WORK OR UNDERTAKING IS A WORK FOR THE GENERAL ADVANTAGE OF CANADA AND WHERE THAT DECLARATION HAS NOT BEEN SET ASIDE BY THE COURTS, THIS BOARD MUST BE BOUND BY THE DECLARATION.

THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

BOARD MEMBER D. B. ARCHER DISSENTED AND SAID:-

"| DISSENT.

This Board on numerous occasions has certified this type of mill and its jurisdiction has never been challenged. It is my opinion that where provincial jurisdiction is challenged, a tribunal such as the O.L.R.B. should not give it away. In this case I would have accepted the jurisdiction leaving it to a competent body to make any necessary final determination."

10353-65-R: EtoBicoke Wine Workers Union Local No 1 (Applicant) v. The Parkdale Wines Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS
BAFGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT.

THE APPLICANT SUBMITTED DOCUMENTARY EVIDENCE OF MEMBERSHIP IN SUPPORT OF ITS APPLICATION CONSISTING OF A DOCUMENT PURPORTING TO BE THE MINUTES OF A MEETING OF THE APPLICANT HELD AT COOKSVILLE WHEREIN A CHANGE IN THE NAME OF THE APPLICANT WAS APPROVED TO READ ETOBICOKE WINE WORKERS UNION LOCAL No. 1. THIS MINUTE IS FOLLOWED BY THE FOLLOWING STATEMENT "THE FOLLOWING MEMBERS PAID \$1.00 FEE". THIS STATEMENT IS THEN FOLLOWED BY 17 SIGNATURES OF EMPLOYEES. THE MINUTES AND THE STATEMENT FOLLOWING THE MINUTES ARE NOT DATED.

IT HAS NEVER BEEN THE BOARD®S PRACTICE TO ACCEPT MEMBERSHIP EVIDENCE IN THE FORM SET OUT ABOVE AND THE BOARD IN THIS CASE IS NOT PREPARED TO ALTER ITS PRACTICE.

BECAUSE OF THE DEFECTS IN THE DOCUMENTARY EVIDENCE
OF MEMBERSHIP SUBMITTED BY THE APPLICANT, THE BOARD IS NOT
SATISFIED THAT MORE THAN FORTY-FIVE PER CENT OF THE EMPLOYEES
OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM
TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE
MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE
WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

In view of this finding with respect to the membership evidence submitted by the applicant it is unnecessary for the Board to make any finding with respect to the status of the applicant as a trade union within the meaning of section  $\mathbf{1}(\mathbf{1})$  (j) of the Labour Relations Act.

THIS APPLICATION IS THEREFORE DISMISSED."

10424-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Springview Apartments Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant has applied for an "all employee" unit. The respondent submits that the unit should be restricted to the craft represented by the applicant. This Board has in a number of recent cases certified the applicant for an "all employee" unit. Furthermore, the question of the use of all employee units in construction industry cases was dealt with by the Board in the Roy Construction and Supply Company Limited case, 0.1.8.8. Monthly Report, November 1964, p. 360, in that case the same arguments were advanced as in the present case and an all employee unit was found to be appropriate.

IN THESE CIRCUMSTANCES THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF MCNAB, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE

A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE RESPONDENT ARGUES THAT THE BOARD SHOULD HAVE REGARD TO THE FACT THAT THERE WILL BE A "BUILD UP" OF EMPLOYEES IN THE CRAFTS REPRESENTED ON THE JOB AT THE DATE OF THE MAKING OF THE APPLICATION AND IN OTHER CRAFTS. WHILE THERE MAY HAVE BEEN A TURNOVER IN THE LABOUR FORCE WE ARE NOT PERSUADED ON THE EVIDENCE BEFORE US THAT ANY SUBSTANTIAL BUILD UP HAS OR WILL OCCUR. EVEN IF WE WERE TO ACCEPT THE LIST FILED AT THE HEARING BY THE RESPONDENT THERE IS NOTHING BEFORE US TO SHOW WHETHER PERSONS IN THE TRADES OTHER THAN CARPENTERS, LABOURERS AND ENGINEERS, ARE OR WILL BE EMPLOYED BY THE RESPONDENT RATHER THAN SUBCONTRACTORS. ON THE BASIS OF THAT LIST THE NUMBER IN THE BARGAINING UNIT WHOM THE BOARD COULD REASONABLY INFER WERE EMPLOYEES OF THE RESPONDENT HAS INCREASED BY ONLY FOUR IN A PERIOD EXTENDING OVER A MONTH.

IN THESE CIRCUMSTANCES, THEREFORE, WE DO NOT INTEND
TO DEPART FROM OUR REGULAR PRACTICE OF ASCERTAINING THE NUMBER
OF EMPLOYEES IN THE BARGAINING UNIT AS AT THE DATE OF THE
MAKING OF THE APPLICATION.

However, the Board is cognizant of the fact that all employee units in the construction industry may lead to difficulties particularly where at the date of the making of the application not all the crafts which the employer intends to use on the job are represented or, perhaps, where there is to be a build up in a particular craft. In future cases, when the issue is raised, the Board intends to review the question as to whether its policies in non-construction cases regarding build up ought to be applied in whole or in part to all employee units in the construction industry. The Board will also give consideration to reviewing the principle, rejected in the Roy Construction case, of restricting the bargaining unit to the crafts represented at the date of the making of the application."

#### INDEXED ENDORSEMENT - TERMINATION

10097-64-R: Mr. John Dyck (Applicant) v. United Steelworkers of America (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for declaration terminating BARGAINING RIGHTS. At the HEARING IN THIS MATTER, THE BOARD POINTED OUT TO COUNSEL FOR THE APPLICANT THAT THERE HAD BEEN NO EVIDENCE OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISHED TO BE REPRESENTATED BY THE TRADE UNION FILED WITH THE BOADD NOT LATER THAN THE TERMINAL DATE FOR THIS APPLICATION.

COUNSEL ADVISED THE BOARD THAT, PRIOR TO FILING THIS APPLICATION, THE APPLICANT HAD SENT A LETTER TO THE BOARD BEARING THE SIGNATURES OF HIMSELF AND OTHER PERSONS PURPORTING TO BE EMPLOYEES OF RELIANCE TOOL DIE CASTING, LTD., AND SEEKING THE RELIEF NOW SOUGHT BY THIS APPLICATION.

A SEARCH OF THE BOARD'S FILES REVEALED THAT SUCH A LETTER HAD BEEN RECEIVED BY THE BOARD ON MARCH 2ND, 1965. THE LETTER READ IN PART AS FOLLOWS:-

"WE WOULD LIKE TO PUT THE UNION OUT OF FORCE AND WOULD APPRECIATE FURTHER INFORMATION ON HOW TO TO SO BY RETURN MAIL."

MR. PARK, FOR THE RESPONDENT TRADE UNION, TOOK THE POSITION
THAT THIS LETTER WAS MERELY A REQUEST FOR INFORMATION AND SHOULD
NOT BE ADMITTED AS EVIDENCE IN THIS APPLICATION.

The situation is analogous to that, not uncommon in the Board's experience, in which a trade union, in applying for certification, requests that evidence of membership be transferred from another file and considered with reference to a new application. The only questions of substance which could be raised with respect to such a proceeding are, (1) whether the evidence is relevant to an issue in the proceeding before the Board (that is, whether the evidence is evidence of membership in the trade union involved or, as in the present case, of signification by employees of the employer that they no longer wish to be represented by the trade Union); and (2) whether the evidence has been submitted in conformity with the requirements of section 50 of the Board's Rules of Procedure.

IN THE INSTANT CASE, WHILE THE DOCUMENT IN QUESTION IS IN THE FORM OF A REQUEST FOR INFORMATION IT ALSO CONTAINS A STATEMENT OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION. THE DOCUMENT CONTAINS SUFFICIENT INFORMATION ON ITS FACE TO RELATE IT TO THIS APPLICATION AND IT WAS RECEIVED BY THE BOARD BEFORE THE TERMINAL DATE. SINCE THE RESPONDENT TRADE UNION HAD NOT AT THE TIME OF THE HEARING BEEN GIVEN NOTICE OF THE RECEIPT OF THIS DOCUMENT BY THE BOARD, AN ADJOURNMENT WAS GRANTED AND THE BOARD RESERVED ITS RULING AS TO THE ADMISSIBILITY OF THE DOCUMENT.

THE BOARD RULES THAT THE DOCUMENT IN QUESTION IS ADMISSIBLE IN THIS APPLICATION AS EVIDENCE OF THE SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION."

#### INDEX ENDORSEMENTS - STRIKE UNLAWFUL

10354-65-U: A.L. WATSON LIMITED (APPLICANT) v. H. WHALEN, M. SCHWARTZ, W. BLAKEY, J. VENIER, B. BURLON, AND S. ABOLINS (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration that a strike ENGAGED IN BY THE RESPONDENTS IS UNLAWFUL.

THE RESPONDENTS, AT ALL RELEVANT TIMES WERE BRICKLAYERS EMPLOYED BY THE APPLICANT AND WERE MEMBERS OF THE BRICKLAYERS!
UNION No. 2.

The applicant and The Bricklayers Union No. 2 were partiesx to a collective agreement which was effective from May 1st, 1963 until April 30th, 1965. The parties to that collective agreement are currently bargaining for a renewal of the collective agreement. The respondent employees of the applicant with whom we are here concerned were employed by the applicant at its Ste. Madeline's Separate School, York Mills Road, Metropolitan Toronto Job site and were covered by the collective agreement between the applicant and The Bricklayers' Union No. 2.

The testimony of the witnesses in this case indicated that while The Bricklayers' Union No. 2 is attempting to develop the practice to cause 10" standard concrete blocks to be laid by two bricklayers, it has formerly been the practice in the industry and it is the usual practice of the applicant to cause 10" standard concrete blocks to be laid by one bricklayer. Blocks 12" or over require two bricklayers.

Apparently the question of the number of bricklayers that would be required to lay the concrete blocks was considered by the parties at the time the above-mentioned collective agreement was entered into because clause 25 of the collective agreement deals with the problem. Clause 25 of the collective agreement reads as follows:

"IT IS AGREED THAT WHEN STANDARD AGREGATE

CONCRETE BLOCKS ARE USED HAVING A WIDTH OF

(12") TWELVE INCHES OR OVER, SAME WILL BE

LAID BY USING TWO BRICKLAYERS. THIS SHALL

NOT HOWEVER APPLY TO LIGHT WEIGHT AGGREGATE

BLOCKS SUCH AS CINDER, HAYDITE, OR SLAG."

IN FEBRUARY 1964 (DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES) THE RESPONDENT AMENDED ITS WORK RULES AS CONTAINED IN ITS CONSTITUTION AND BY-LAWS BY PROVIDING THAT TWO BRICKLAYERS MUST WORK IN PAIRS TO LAY 10" BLOCKS AND IF THEY FAILED TO COMPLY WITH THIS NEW WORK RULE THEY

SHALL BE FINED NOT LESS THAN \$10.00. THIS NEW WORK RULE IS CONTAINED IN ARTICLE XVI, SECTION 10, OF THE RESPONDENT BY-LAWS.

IT APPEARS THAT THE BRICKLAYERS UNION No. 2 HAS ESTABLISHED A PATTERN OF ATTEMPTING TO COMPEL CONTRACTORS TO USE TWO BRICKLAYERS WHEN LAYING 10" CONCRETE BLOCKS AND THE BOARD HAS ON SEVERAL OCCASIONS WITHIN THE PAST YEAR ISSUED STRIKE DECLARATIONS IN CONNECTION WITH THESE ATTEMPTS. (SEE LEADER MASONRY & FORMING LIMITED, BOARD FILE 8603-64-U AND ALPS CONSTRUCTION, BOARD FILE 8554-64-U).

ON TUESDAY, THE 4TH DAY OF MAY, 1965, THE RESPONDENTS WERE REQUESTED BY THE APPLICANT TO LAY 10" CONCRETE BLOCKS. WHILE THE RESPONDENTS INDICATED THAT THEY WERE PREPARED TO LAY 10" CONCRETE BLOCKS TWO BRICKLAYERS TO A BLOCK, THEY WERE NOT PREPARED TO LAY THE BLOCKS ONE BRICKLAYER TO A BLOCK. IT APPEARS FROM THE EVIDENCE THAT MR. H. WHALEN, SHOP STEWARD OF THE BRICKLAYERS UNION No. 2 ON THIS PROJECT AFTER CONTACTING THE UNION BUSINESS AGENT AND HAVING DISCUSSED THE MATTER WITH THE OTHER RESPONDENTS ADVISED THE APPLICANT'S FOREMAN THAT THEY WERE NOT PREPARED TO WORK ON 10" BLOCKS ALONE. ON WEDNESDAY, MAY 5TH, 1965, AT APPROXIMATELY 8:00 A.M. THE RESPONDENTS REPORTED FOR WORK BUT SINCE NO OTHER WORK WAS AVAILABLE OTHER THAN THE LAYING OF 10" BLOCKS, THEY REFUSED TO COMMENCE WORKING UNLESS THEY WERE ABLE TO PERFORM THE WORK IN PAIRS. NO WORK WHATSOEVER WAS PERFORMED BY THE RESPONDENTS ON THE MORNING OF MAY 5TH, ALTHOUGH WORK WAS AVAILABLE.

ABOUT 12:30 P.M. ON MAY 5TH, AT WHICH TIME THE BUSINESS AGENT OF THE BRICKLAYERS UNION No. 2 WAS ON THE JOB SITE, THE RESPONDENTS RETURNED TO WORK AND COMMENCED TO LAY THE 10" STANDARD CONCRETE BLOCK, ONE BRICKLAYER TO A BLOCK. HOWEVER, THE BUSINESS AGENT WAS INTERFERING WITH THE PRODUCTION BY TALKING TO THE RESPONDENTS AND SUGGESTING TO THE RESPONDENTS THAT THEY WORK FOR OTHER EMPLOYERS. THE BUSINESS AGENT WAS REQUESTED BY THE SUPERINTENDENT OF THE GENERAL CONTRACTOR TO LEAVE THE JOB SITE. THE BUSINESS AGENT ADVISED THE SUPERINTENDENT THAT "IF I HAVE TO LEAVE THIS JOB MY BOYS MAY AS WELL COME WITH ME". THE BUSINESS AGENT THEN ANNOUNCED IN A LOUD VOICE TO THE BRICKLAYERS THAT HE HAD BEEN ASKED TO LEAVE THE JOB SITE. ALL OF THE RESPONDENTS THEN PACKED THEIR TOOLS AND CEASED WORKING. AT APPROXIMATELY 2:00 P.M. OR SHORTLY THEREAFTER, THE RESPONDENTS REQUESTED THE APPLICANT TO TERMINATE THEIR EMPLOYMENT AND RETURN THEIR WORKMAN'S COMPENSATION BOOKS, VACATION PAY BOOKS AND OTHER DOCUMENTS TO THEM AND TO PAY THEM OFF.

It appears from the evidence that after commencing work at approximately  $12:30~\rm p.m.$  and prior to walking off the job at  $2:00~\rm p.m.$  some or all of the respondents had requested that their employment be terminated at  $4:30~\rm p.m.$  that day, on the basis that they were not prepared to continue to work alone on 10" concrete blocks. The union business agent made no attempt to prevent the walkout at  $2:00~\rm p.m.$ 

Some of the respondents testified that the reason they refused to work on the aggregate concrete blocks was for health reasons. However, we are not prepared to accept this excuse as the real reason for their action on May 5th. We find that the respondents activities were part of the attempt by The Bricklayers' Union No. 2 and its members to alter the established practice of Laying 10" blocks by one bricklayer.

The parties to the collective agreement made special provisions for the laying of 12" concrete block and if it is advisable for two men to lay 10" concrete block, similar provisions can be bargained for. A party to a collective agreement and persons bound by a collective agreement can not be permitted to unilaterally alter the terms and conditions of the collective agreement.

THE RESPONDENTS TOOK THE POSITION THAT THE APPLICANT SHOULD NOT BE GRANTED THE REMEDY IT IS SEEKING BUT SHOULD BE COMPELLED TO ARBITRATE ITS DIFFERENCES WITH THE UNION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. THE REMEDY SOUGHT BY THE APPLICANT IS NOT AVAILABLE TO IT UNDER THE COLLECTIVE AGREEMENT AND IT IS OUR OPINION THAT IT IS NOT THE APPLICANT WHO SHOULD BE CRITICIZED FOR SEEKING THE REMEDY WHICH IS AVAILABLE TO IT UNDER THE LABOUR RELATIONS ACT, BUT IT IS THE BRICKLAYERS UNION No. 2 AND ITS MEMBERS WHO ARE SUBJECT TO CRITICISM FOR DELIBERATELY IGNORING THE BOARD PREVISOUS DECLARATIONS WHEN INDENTICAL SITUATIONS ARISE WITH OTHER EMPLOYEES AS HAS BEEN THE PATTERN AS SHOWN BY THE EVIDENCE IN THIS CASE.

On the basis of all the evidence the Board finds that it is abundantly clear that the employees of the applicant were faced with the choice of their working in pairs when laying the concrete blocks in accordance with the By-Laws of The Bricklayers' Union No. 2 or paying a fine if they continue to lay 10" blocks alone.

Accordingly the employees refused to lay 10" block rather than risk a fine by The Bricklayers' Union No. 2. In addition, it would appear from the evidence that even though the employees could obtain other employment where they would not be required to lay 10" block alone, the collective agreement binding upon them DID not give them the right to engage in the activity which took place.

We are therefore impelled to find that such a refusal by the employees in question falls within the definition of "Strike" as defined by section 1 (1) (1) of the Labour Relations Act and when all the respondents refused to work in combination or in concert or in accordance with a common understanding designed to restrict or limit the out-put of the applicant.

We further find that the concerted activities of the Respondents at  $8:00~a_{\circ}m_{\circ}$  on May 5th, when they refused to commence to work and

AGAIN AT 2:00 p.m. ON THE SAME DAY WHEN THEY CEASED TO WORK AFTER HAVING RECOMMENCED WORK AT 12:30 p.m. CONSTITUTE SEPARATE STRIKES.

The fact that the respondents are now employed by other employers does not in any way after the fact that on May 5th, 1965, they engaged in a strike, (See Section 1 subsection 2 of The Labour Relations Act). The strikes engaged in by the employees were engaged in during the term of operation of the collective agreement covering them and is therefore unlawful.

Pursuant to the provisions of Section 67 of The Labour Relations Act we declare that the respondents, being employees of the applicant, engaged in unlawful strikes commencing May 5th, 1965, contrary to the provisions of Section 54 of The Labour Relations Act.

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

"| DISSENT.

! WOULD HAVE ACCEPTED THE EVIDENCE OF THE EMPLOYEES THAT THEY REFUSED TO HANDLE THE 10" BLOCKS ALONE, FOR THE HEALTH REASONS GIVEN BY THEM IN EVIDENCE AND IN THESE CIRCUMSTANCES ! WOULD NOT MAKE THE DECLARATION APPLIED FOR."

10505-65-U: KIMBERLY-CLARK OF CANADA LIMITED (APPLICANT) v. A. E. ALLEN, ET AL (RESPONDENTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration that a strike engaged in by the respondents in unlawful.

HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FINDS THAT ALL THE RESPONDENTS ARE EMPLOYEES OF THE APPLICANT AND ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS A.F. OF L. AND ITS LOCAL 289.

Notice was served pursuant to the provisions of Article 31 of the collective agreement wherein the union indicated its desire to bargain for the renewal of the collective agreement. Following the appointment of a Conciliation Officer the Minister directed that a Conciliation Board be established but up to and including the date of the hearing the Conciliation Board had not met.

IT WOULD APPEAR FROM THE EVIDENCE CALLED BY THE APPLICANT, WHICH WAS NOT CONTESTED BY THE RESPONDENTS, THAT THE RESPONDENTS, ON JUNE 10TH AND JUNE 11TH, 1965, REFUSED TO CONTINUE TO WORK IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING

WITH THE DESIGN OF RESTRICTING OR LIMITING THE OUTPUT OF THE APPLICANT AND THEREBY ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION  $1(1)(\tau)$  OF THE LABOUR RELATIONS ACT.

ON JUNE 10th, 1965, AFTER THE RESPONDENTS HAD REFUSED TO CONTINUE TO WORK, THE RESPONDENTS ADVISED THE APPLICANT, BY TELEPHONE, OF 4 CONDITIONS WHICH THEY REQUIRED THE APPLICANT TO AGREE TO PRIOR TO RETURNING TO WORK. THESE CONDITIONS WERE AS FOLLOWS:

- (a) THE RESPONDENTS REQUIRED THE APPLICANT TO AGREE TO THE ESTABLISHMENT OF A CONCILIATION BOARD BY JUNE 17TH, 1965.
- (B) THE APPLICANT WAS REQUIRED TO DISCONTINUE EXTRA SHIPPING.
  - (C) NO EMPLOYEE WAS TO WORK IN EXCESS OF 40 HOURS PER WEEK AND NO OVERTIME WAS TO BE REQUIRED OF THE EMPLOYEES.
- (D) NO REPERCUSSIONS WERE TO BE TAKEN AGAINST ANY OF THE EMPLOYEES FOR ENGAGING IN THE WALK-OUT.

The company took the position that it would not discuss the matters with the respondents until the respondents had returned to work. The respondents returned to work at approximately 3:30 p.m. on Friday, June 11th, 1965 and have continued to work up to and including June 21st, 1965, the date of the hearing in this matter.

The walk-out which took place on June 10th had been foretold by the St. Catharines Standard on June 4th, 1965, wherein that newspaper contained a statement made by officials of Local 289, International Brotherhood of Pulp, Sulphite and Paper Mill Workers that "a secret strike deadline has been set by its membership".

ON JUNE 14th, 1965, FOLLOWING THE RETURN TO WORK OF THE EMPLOYEES, AN OFFICER OF THE APPLICANT RECEIVED A FURTHER TELEPHONE CALL FROM THE PRESIDENT OF LOCAL 289 AND THE APPLICANT WAS ADVISED THAT THE REGULAR MONTHLY UNION MEETING HAD TAKEN PLACE THAT EVENING AND THE MEMBERSHIP HAD INSISTED THAT THE 4 CONDITIONS FOR THEIR RETURN TO WORK WOULD STILL APPLY.

ON JUNE 15th, 1965, THE PRESIDENT AND A SHOP STEWARD OF LOCAL 289 PRESENTED TO THE APPLICANT'S MILL MANAGER, A MEMORANDUM DATED JUNE 10th, 1965, WHEREIN THE 4 CONDITIONS FOR THE RETURN TO WORK OF THE EMPLOYEES WERE SET OUT. THIS MEMORANDUM READS IN PART AS FOLLOWS:

"THE COMPANY WILL BE INSTRUCTED THAT WE MEET THE BOARD BEFORE NEXT THURSDAY OR A FURTHER SHUT DOWN WILL OCCUR.

(A) THERE WILL BE NO EXTRA SHIPPING.

- (B) 40 HOURS ONLY EACH EMPLOYEE, NO OVERTIME.
- (C) NO ONE TO BE FIRED."

THE DATE REFERRED TO IN THE MEMORANDUM FOR THE MEETING OF THE CONCILIATION BOARD WAS THURSDAY, JUNE 17TH, 1965.

ON JUNE 16th, 1965, OFFICERS OF THE APPLICANT MET WITH REPRESENTATIVES OF THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AND OFFICERS OF ITS LOCAL 289 AND THE 4 CONDITIONS WERE DISCUSSED. THE APPLICANT INDICATED AT THAT TIME THAT IT WOULD BE VIRTUALLY IMPOSSIBLE TO ESTABLISH A CONCILIATION BOARD BY THE FOLLOWING DAY AS REQUESTED, SINCE THE COMPANY NOMINEE AND THE UNION NOMINEE WHO HAD ALREADY BEEN APPOINTED HAD NOT AS YET AGREED UPON A CHAIRMAN. THE COMPANY, HOWEVER, INDICATED THAT IT HAD DISCONTINUED EXTRA SHIPPING. WITH RESPECT TO OVERTIME WORK, THE APPLICANT POINTED OUT THAT OVERTIME HAD ALWAYS BEEN PERFORMED BY CERTAIN EMPLOYEES IN THE PAST AND THAT THIS HAD NEVER APPEARED TO BE A PROBLEM. THE APPLICANT FURTHER INDICATED THAT IT COULD GIVE NO DECISION ON THE LAST CONDITION IN THAT IT WAS NOT ABLE TO DECIDE WHETHER OR NOT ANYONE WAS TO BE FIRED UNTIL THE DISPUTE HAD BEEN FINALLY SETTLED.

THE REPRESENTATIVES OF THE RESPONDENTS AT THIS MEETING INDICATED TO THE APPLICANT THAT THEY COULD NOT SAY WHETHER OR NOT THE RESPONDENTS WOULD GO OUT ON STRIKE AGAIN IF THE CONCILIATION BOARD DID NOT MEET AS DEMANDED, SINCE THEY WERE ONLY THE MESSENGERS FOR THE EMPLOYEES.

THE APPLICANT ALSO TESTIFIED THROUGH ITS WITNESSES THAT CERTAIN EMPLOYEES WHO WERE SCHEDULED TO WORK OVERTIME ON SUNDAY, JUNE 20TH, THE DAY PRIOR TO THE HEARING OF THIS MATTER, HAD NOT REPORTED FOR WORK AS SCHEDULED. WHILE THE SCHEDULING OF SUNDAY WORK WAS PART OF THE REGULAR PRACTICE OF THE COMPANY AND INVOLVES CERTAIN CLEAN-UP DUTIES, THERE HAD BEEN NO PREVIOUS OCCASIONS WHEN THE SUNDAY CLEAN-UP CREW HAD FAILED TO REPORT AS WAS THE CASE ON JUNE 20TH.

The mill manager of the respondent testified with respect to his concern that further problems with the respondents might arise since all of the conditions had not been satisfied and the threat that "a further shut down will occur" has not been removed by the simple fact that June 17th had passed since the threat was conditioned upon the meeting of a Conciliation Board and the Conciliation Board had not as yet been set up.

NO EVIDENCE WAS CALLED BY THE RESPONDENTS IN THIS CASE AND THERE IS NO EVIDENCE THAT THE CONDITIONS SET BY THE RESPONDENTS FOR THEIR CONTINUING TO WORK HAVE BEEN SATISFIED OR WITHDRAWN.

WE ARE THEREFORE OF OPINION THAT THE FACTS OF THIS CASE

FALL WITHIN THE EXCEPTIONS OUTLINED BY THE BOARD IN THE BALL BROTHERS LIMITED CASE, 1957, C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 5559, \$16,091 C.L.S. 76-576.

HAVING REGARD TO THE UNCONTRADICTED EVIDENCE IN THIS CASE WE ARE IMPELLED TO FIND THAT THE APPLICANT HAS A REASONABLE FEAR THAT ITS OPERATIONS WILL AGAIN BE INTERRUPTED IN A SIMILAR FASHION IN VIEW OF THE FACTS THAT THE RESPONDENTS, AFTER RETURNING TO WORK SERVED WRITTEN NOTICE ON THE APPLICANT THAT A FURTHER SHUT DOWN WILL OCCUR IF A CONCILIATION BOARD IS NOT ESTABLISHED TO THEIR SATISFACTION AND IF THE OTHER CONDITIONS ENUMERATED BY THE RESPONDENTS WERE NOT MET. SINCE SOME OR ALL OF THESE CONDITIONS, ESPECIALLY THAT WITH RESPECT TO THE CONCILIATION BOARD HAD NOT BEEN MET BY THE DATE OF THE HEARING IN THIS MATTER, IT IS NOT UNREASONABLE TO ANTICIPATE THAT A FURTHER SHUT DOWN MIGHT OCCUR AS THREATENED.

FOR THE REASONS SET OUT ABOVE, WE FURTHER FIND THAT THE STRIKE ENGAGED IN BY THE RESPONDENTS AT ST. CATHARINES ON JUNE 10TH AND JUNE 11TH, 1965, WAS CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE LABOUR RELATIONS ACT.

The Board therefore declares, pursuant to the provisions of section 67 of The Labour Relations Act that the strike engaged in by the respondents at St. Catharines, on June 10th and June 11th, 1965, was unlawful."

BOARD MEMBER DENNIS MCDERMOTT DISSENTED AND SAID:-

" | DISSENT.

THE DECISION OF THE MAJORITY IS PREDICATED UPON THE REASONING IN THE "BALL BROTHERS LIMITED CASE", IE, "THAT THE APPLICANT HAS A REASONABLE FEAR THAT ITS OPERATIONS WILL AGAIN BE INTERRUPTED IN A SIMILAR FASHION".

MY ASSESSMENT OF THE EVIDENCE IS THAT THE RESPONDENTS ENGAGED IN WHAT SUBSEQUENTLY PROVED TO BE AN ABORTIVE WORK STOPPAGE FOR AN OBJECTIVE WHICH BECAME UNATTAINABLE. THEY FAILED IN THEIR OBJECTIVE BY THE ACT OF RETURNING TO WORK. HAVING DONE SO, IT IS CLEAR TO ME THAT THEY IN FACT ABANDONED THEIR DEADLINE OF JUNE 17TH, AND IN AS MUCH AS THE DISPUTE SEEMS CRYSTALIZED BY THE JUNE 17TH DEADLINE IT IS MY OPINION THAT THE MATTER ENDED THERE. HAVING RETURNED TO WORK, AND HAVING REMAINED AT WORK SINCE, I CAN SEE NO REASON FOR ISSUING A DECLARATION. THE MAJORITY ATTACHES SIGNIFICANCE TO THE MEMO SUBMITTED TO THE APPLICANT BY THE LOCAL UNION PRESIDENT ON JUNE 15TH. I DO NOT. IN MY OPINION IT WAS A RATHER MEANINGLESS AUTOMATIC REPETITION OF PREVIOUS DEMANDS ALREADY ABANDONED.

IN MY OPINION THE APPLICANT, FAR FROM BEING INHIBITED BY A REAL FEAR OF THE FUTURE, IS NURSING AN ARTIFICAL PARADE OF HORRORS BASED ON UNSUBSTANTIATED RUMOURS. THE SECOND POINT OF THE MAJORITY DECISION IS THE MATTER OF CERTAIN EMPLOYEES, WHO, ON ONE OCCASION

FAILED TO WORK OVERTIME ON CERTAIN CLEANING OPERATIONS. I ATTACH
NO SIGNIFICANCE TO THIS WHATSOEVER. THE FACT THAT CERTAIN EMPLOYEES
INDICATE A RELUCTANCE TO WORK OVERTIME FROM TIME TO TIME, DOES NOT
IN MY VIEW CONJURE VISIONS OF FUTURE WORK STOPPAGES.

FOR THE FOREGOING REASONS ! WOULD HAVE DISMISSED THE

#### INDEXED ENDORSEMENTS - SECTION 65

10096-64-U: BOOT AND SHOE WORKERS! UNION (COMPLAINANT) v. DE CARLO SHOE CO (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Having regard to all the evidence and the credibility of the witnesses as evidenced by their demeanour in the witness box and the manner in which they gave their evidence, the Board is satisfied that the respondent, on February 22nd, 1965, refused to continue to employ Mrs. Filomena Troiano and Mrs. Adelina Jannaco contrary to the provisions of section 50 of the Labour Relations Act.

IT FURTHER APPEARS FROM THE EVIDENCE THAT MRS. TROIAND WAS REINSTATED IN HER EMPLOYMENT. SHE WAS INVITED TO RETURN TO WORK BY THE RESPONDENT ON OR ABOUT APRIL 29TH, 1965, HOWEVER, FOR PERSONAL REASONS SHE WAS UNABLE TO RETURN UNTIL TWO WEEKS LATER. ANY LOSS INCURRED BY MRS. TROIAND BECAUSE OF HER INABILITY TO RETURN TO WORK WHEN INVITED TO DO SO SHOULD NOT BE CHARGED TO THE RESPONDENT. THE BOARD FINDS, HOWEVER, THAT MRS. TROIAND MADE ALL REASONABLE EFFORTS TO MITIGATE HER LOSS OF EARNINGS BETWEEN FEBRUARY 22ND, AND APRIL 30TH, 1965, AND ACCORDINGLY FINDS THAT HER LOSS OF EARNINGS DURING THIS PERIOD AMOUNTED TO \$460.00.

MRS. IANNACO WAS ALSO REINSTATED BY THE RESPONDENT ON MAY 4TH, 1965. However, there is a question as to whether Mrs. IANNACO TOOK ALL REASONABLE STEPS TO MITIGATE HER DAMAGES. SOME OF THE FACTORS THE BOARD HAS CONSIDERED IN MAKING THIS DETERMINATION ARE HEREAFTER SET OUT. ON FEBRUARY 22ND, 1965, WHEN THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY HER, SHE WAS INFORMED BY THE RESPONDENT THAT SHE WAS BEING LAID OFF FOR TWO TO THREE WEEKS, IMMEDIATELY THEREAFTER SHE REGISTERED WITH THE UNEMPLOYMENT INSURANCE COMMISSION AND SHE WAS PREPARED TO ACCEPT ANY EMPLOYMENT OFFERED TO HER BY THE UNEMPLOYMENT INSURANCE COMMISSION. AT NO TIME DID MRS. IANNACO REFUSE ALTERNATE EMPLOYMENT. BECAUSE OF THE FACT THAT SHE WAS NOT FLUENT IN ENGLISH, SHE WOULD HAVE EXPERIENCED EXTREME DIFFICULTY IN FINDING ALTERNATE EMPLOYMENT BY CANVASSING FACTORIES FROM DOOR TO DOOR. FINALLY, ALTERNATE EMPLOYMENT DID NOT APPEAR TO BE READILLY AVAILABLE BECAUSE MRS. TROIAND WAS UNSUCCESSFUL IN OBTAINING SUCH

EMPLOYMENT EVEN THOUGH SHE MADE PERSONAL CONTACT WITH A NUMBER OF COMPANIES IN AN ATTEMPT TO LOCATE ANOTHER JOB.

WE ACCORDINGLY FIND THAT WHILE MRS. IANNACO COULD HAVE MADE ADDITIONAL EFFORTS, IN THE CIRCUMSTANCES OF THIS CASE, WE ARE OF OPINION THAT SHE DID NOT FALL VERY FAR BEHIND THE STANDARDS THE BOARD HAS SET IN DETERMINING WHAT WOULD CONSTITUTE "ALL REASONABLE EFFORTS" TO MITIGATE HER DAMAGES, WE THEREFORE FIND THAT THE LOSS SUSTAINED BY MRS. IANNACO FOR WHICH SHE IS ENTITLED TO BE REIMBURSED AMOUNTS TO \$400.00.

WE THEREFORE DIRECT THAT THE RESPONDENT PAY TO Miss. FILIMENA TROIAND THE SUM OF \$460.00 AND TO MRS. ADELINA LANNACO THE SUM OF \$400.00 ON ACCOUNT OF THE LOSS OF EARNINGS SUSTAINED BY THEM BY REASON OF THE RESPONDENT HAVING REFUSED TO CONTINUE TO EMPLOY THEM CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE ACT."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

" DISSENT

IN ASSESSING COMPENSATION FOR LOSS OF EARNINGS TO BE PAID TO A PERSON WHOSE EMPLOYMENT HAS BEEN TERMINATED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD HAS FOLLOWED "THE PRINCIPLE OF THE COMMON LAW THAT THE AGGRIEVED PERSON MUST TAKE REASONABLE STEPS TO MINIMIZE HIS LOSS, HAVING REGARD TO THE CIRCUMSTANCES OF THE PARTICULAR CASE": METROPOLITAN MEAT PACKERS LIMITED (1960-1964) C.L.L.C. Vol. 2, 16, 230.

IN MY OPINION, IT IS CLEARLY ESTABLISHED IN EVIDENCE THA" MRS. LANNACO DID NOT TAKE REASONABLE STEPS TO MITIGATE HER LOSS, AND THAT THERE ARE NO UNUSUAL CIRCUMSTANCES WHICH WOULD EXCUSE HER FROM HER OBLIGATION TO DO SO.

THE EVIDENCE IS THAT OTHER THAN TO REGISTER FOR UNEMPLOYMENT INSURANCE MRS. IANNACO DID NOTHING TO ACTIVELY SEEK EMPLOYMENT. INDEED SHE WAS FRANK TO ADMIT THAT "I MADE NO OTHER EFFORT BECAUSE I WAS TOLD I WOULD BE CALLED BACK" - "YES, I COULD HAVE GONE TO WORK SOMEWHERE ELSE BUT I WAS WAITING TO BE RECALLED." IT WOULD SEEM CLEAR HOWEVER THAT MRS. IANNACO DID NOT BELIEVE SHE WOULD IN FACT BE RECALLED WITHIN THE THREE TO FOUR WEEK PERIOD WHICH SHE STATED HER FOREMAN HAD SPECIFIED AS THE PROBABLE DURATION OF THE LAYOFF. INDEED, IT IS OPEN TO QUESTION AS TO WHETHER SHE BELIEVED SHE WOULD EVER BE RECALLED FOR, PRIOR TO THE EXPIRATION OF THE THREE WEEK PERIOD, SHE LAUNCHED THE WITHIN COMPLAINT. IN THESE CIR UMSTANCES I AM IMPELLED TO CONCLUDE THAT SHE DID NOT ACTIVELY SEE EMPLOYMENT BECAUSE SHE WAS PREPARED TO RELY ON THE SUCCESSFUL PROJECUTION OF HER COMPLAINT.

The fact that Mrs. Iannaco does not speak English Fluently, or that Mrs. Troiano, who suffers a like disability, was unsuccessful in her attempts to secure other employment, does not in my opinion relieve Mrs. Iannaco from the requirement that she seek employment in mitigation of her loss of earnings. There is no evidence that Mrs. Iannaco was aware of Mrs. Troiano's lack of success nor indeed can it be assumed that had Mrs. Iannaco applied for employment to the same, or other industrial companies, she would likewise have been unsuccessful. In any event, the Board's clear policy does not require that a person be successful, but only that they make prompt and reasonable efforts to secure other employment. This Mrs. Iannaco, on her own admission, did not do.

ACCORDINGLY IN THE CIRCUMSTANCES OF THIS CASE | FIND MRS. | IANNACO | S NOT ENTITLED TO ANY REIMBURSEMENT."

10165-64-U: United Packinghouse, Food and Allied Workers (Complainant) v. Norfish Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE COMPLAINANT HAS COMPLAINED THAT WALTER BRANDOW AND TERRY SMITH WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

The respondent has alleged that it discharged the aggrieved persons on Monday, March 22nd, 1965, for attempting, at the premises of the respondent during working hours, to persuade other employees to become members of the complainant and that the respondent was entitled to discharge the employees for that reason pursuant to the provisions of section 53 of the Labour Relations Act.

THERE IS NO SUBSTANTIAL CONFLICT IN THE EVIDENCE ADDUCED THROUGH THE WITNESS CALLED BY THE COMPLAINANT AND THE WITNESSES CALLED BY THE RESPONDENT.

IT APPEARS THAT THE COMPLAINANT HAD APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MARCH 12TH, 1965, AND THE TERMINAL DATE OF THAT APPLICATION WAS MARCH 22ND, 1965. IT FURTHER APPEARS THAT THERE WAS CONSIDERABLE DISCUSSION AMONG THE EMPLOYEES AT THE PLANT WHEREIN THE MERITS OF THE COMPLAINANT UNION WERE COMPARED WITH THE MERITS OF THE CANADIAN POULTRY WORKERS! UNION WHICH HAD BEEN THE BARGAINING AGENT REPRESENTING THE EMPLOYEES SINCE ABOUT 1958. IT WAS COMMON KNOWLEDGE THAT! THE AGGRIEVED PERSONS WERE THE COMPLAINANT UNION!S PRIMARY VOLUNTARY ORGANIZERS AND THAT THE TWO AGGRIEVED PERSONS HAD ACCOMPANIED A STAFF MEMBER OF THE COMPLAINANT ON VISITS TO THE HOMES OF THE EMPLOYEES DURING THE ORGANIZING CAMPAIGN.

WHILE THE AGGRIEVED PERSONS HAD ASSISTED IN SIGNING UP MEMBERS AWAY FROM THE RESPONDENT'S PREMISES NONE OF THE MEMBERSHIP CARDS WERE SIGNED ON THE RESPONDENT'S PREMISES DURING WORKING HOURS AND NONE OF THE EMPLOYEES WERE ASKED TO SIGN THE CARDS DURING WORKING HOURS.

The general manager of the respondent and the foreman of the respondent testified that it was brought to the attention of the respondent on March 16th, 17th and 18th that Mr. Smith and Mr. Brandow had spoken infavour of the complainant union during working hours at the plant.

ON FRIDAY, MARCH 19th, 1965, THE GENERAL MANAGER AND THE FOREMAN OF THE RESPONDENT AUTHORIZED MR. MATTHEWS AND MRS. CHAPMAN, TWO OF THE RESPONDENT'S EMPLOYEES WHO WERE ALSO OFFICERS OF THE CANADIAN POULTRY WORKERS' UNION TO CIRCULATE A PETITION AGAINST THE UNITED PACKINGHOUSE, FOOD & ALLIED WORKERS ON THE RESPONDENT'S PREMISES DURING WORKING HOURS. THE TWO EMPLOYEES PROCEEDED TO CONTACT OTHER EMPLOYEES WHILE THEY WERE WORKING IN AN ATTEMPT TO PERSUADE THEM TO SIGN THE PETITION. AT APPROXIMATELY 3:30 P.M. ON FRIDAY, MARCH 19TH, 1965, MR. SMITH ASKED MRS. CHAPMAN WHETHER OR NOT HE COULD SIGN THE PETITION AND TEASED HER ABOUT CIRCULATING THE PETITION.

Mrs. Chapman became emotionally upset, complained to the foreman, and left work shortly thereafter.

No action was taken against Mr. Brandow and Mr. Smith up to and including Friday, March 19th even though the foreman had occasion to speak to both these persons at the time that they received their pay cheque from him at quitting time on Friday Afternoon.

On Monday, March 22nd, 1965, at approximately 11:45 a.m. Mr. Brandow and Mr. Smith were both summoned to the foreman's office and were notified that their services were terminated. Their pay cheques, Unemployment Insurance Book and other termination documents had been prepared in advance. While there is some disagreement as to what the foreman said at the time of the discharge we accept the evidence of the aggrieved persons that the foreman handed the termination documents to each of the aggrieved persons and said "I am letting you go and you know the reason why". No further explanation was given and none was requested.

AT NO TIME DID THE RESPONDENT CONFRONT THE AGGRIEVED PERSONS WITH PARTICULARS OF THE ALLEGATIONS WHICH IT MADE AGAINST THEM AND THE RESPONDENT AT NO TIME ASKED THEM TO EXPLAIN THEIR ACTIVITIES. THE AGGRIEVED PERSONS WERE NEVER REQUESTED BY THE RESPONDENT TO DESIST IN THEIR ACTIVITIES AND THERE WAS NO WORK-RULE GOVERNING THE MATTER.

WE FIND ON ALL THE EVIDENCE THAT THE RESPONDENT
DISCRIMINATED AGAINST THE AGGRIEVED PERSONS IN THAT WHILE THE
RESPONDENT AUTHORIZED EMPLOYEES TO TAKE UP A PETITION AND SPEAK
AGAINST THE COMPLAINANT UNION THE RESPONDENT TOOK THE MOST
SEVERE COURSE OPEN TO IT BY DISCHARGING THE AGGRIEVED PERSONS
BECAUSE THEY SPOKE IN FAVOUR OF THE COMPLAINANT UNION.

ONCE AN EMPLOYER OPENS THE DOOR TO DISCUSSION OF UNIONS
ON ITS PREMISES DURING WORKING HOURS THE EMPLOYER CAN NOT BE
HEARD TC COMPLAIN BECAUSE SOME EMPLOYEES SPEAK IN FAVOUR OF A
UNION RATHER THAN AGAINST THE UNION.

IT WAS COMMON KNOWLEDGE THAT THE TWO AGGRIEVED PERSONS WERE THE MAIN EMPLOYEE ORGANIZERS OF THE COMPLAINANT UNION AND WE ARE OF OPINION THAT WHILE THE RESPONDENT HAS ATTEMPTED TO JUSTIFY THE DISCHARGES AND BRING THE DISCHARGES UNDER THE PROVISIONS OF SECTION 53 OF THE ACT THE REAL REASON FOR THE DISCHARGES IS THE FACT THAT THE RESPONDENT HOPED THE DISCHARGES WOULD IN SOME WAY THWART THE COMPLAINANT'S ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES.

WE ARE OF OPINION THAT SECTION 53 SHOULD BE USED BY AN EMPLOYER AS A SHIELD AND NOT AS A SWORD. SECTION 53 SHOULD NOT BE RELIED UPON TO JUSTIFY A DISCHARGE, WHERE THE REAL REASON FOR THE DISCHARGE IS AN ATTEMPT TO THWART THE UNION.

BECAUSE OF THE MANNER IN WHICH THE DISCHARGES TOOK PLACE, WITHOUT ANY ATTEMPT TO VERIFY THE FACTS WITH THE AGGRIEVED PERSONS, AND BECAUSE THE RESPONDENT HAD AUTHORIZED OTHER EMPLOYEES TO DISCUSS THE QUESTION OF THE UNION ON THE COMPANY SPREMISES DURING WORKING HOURS, WE DO NOT ACCEPT THE RESPONDENT SVERSION. WE THEREFORE FIND THAT THE DISCHARGES WERE NOT MADE IN GOOD FAITH UNDER THE PROVISIONS OF SECTION 53 OF THE ACT.

WE ARE THEREFORE SATISFIED THAT MR. BRANDOW AND MR. SMITH WERE DISCHARGE BY THE RESPONDENT ON MARCH 22ND, 1965, CONTRARY TO THE LABOUR RELATIONS ACT.

WE ARE FURTHER SATISFIED THAT MR. BRANDOW AND MR. SMITH MADE ALL REASONABLE EFFORTS TO OBTAIN ALTERNATE EMPLOYMENT IMMEDIATELY FOLLOWING THEIR DISCHARGE.

#### WE THEREFORE DETERMINE THAT

- (a) Mr. Walter Brandow and Mr. Terry Smith shall be Reinstated Forthwith in the positions held by them at the time of their discharge.
- (B) That the respondent pay to Mr. Walter Brandow
  The sum of \$500.00 on account of his loss of
  EARNINGS SUSTAINED BY REASON OF HIS HAVING
  BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN
  THE DATE OF HIS DISCHARGE AND MAY 21st, 1965;

AND THAT THE RESPONDENT PAY TO MR. TERRY SMITH THE SUM OF \$397.00 ON ACCOUNT OF HIS LOSS OF EARNINGS SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF HIS DISCHARGE AND MAY 21st, 1965.

- (c) The Board further directs that the parties meet forthwith with a view to agreeing on the amount of Loss of Earnings that Mr. Walter Brandow and Mr. Terry Smith sustained by reason of their having been discharged contrary to the Act between May 21st, 1965, and the date of their reinstatement.
  - (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE AN OPPORTUNITY TO MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNTS TO BE PAID TO MR. WALTER BRANDOW AND MR. TERRY SMITH."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"| DISSENT.

ON THE EVIDENCE ADDUCED AT THE HEARINGS BEFORE THE BOARD, I FIND THAT WALTER BRANDOW AND TERRY SMITH WERE DISCHARGED FOR ATTEMPTING ON THE PREMISES OF THE RESPONDENT TO PERSUADE EMPLOYEES OF THE RESPONDENT DURING THEIR WORKING HOURS TO BECOME MEMBERS OF THE COMPLAINANT UNION WITHOUT THE PRIOR PERMISSION OF THE MANAGEMENT.

Section 53 of The Labour Relations Act provides that nothing in this Act authorizes any person to carry on such activities. Therefore, the discharges cannot be construed as a violation of The Labour Relations Act and I would dismiss the complaint in respect of both Brandow and Smith."

#### INDEXED ENDORSEMENTS - SECTION 79A

10343-65-M: Western Ontario District Council of the United Brotherhood of Carpenters and Joiners of America, A.F.L. C.I.O. C.L.C. (Trade Union) v. General Contractors Section of the London Builders Exchange (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference by the Minister of Labour pursuant to section  $79\underline{\text{A}}$  of the Act on the Questions:

- (1) WHETHER THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN COLLECTIVELY WITH IT:
- (2) WHETHER THE TRADE UNION HAS PROPERLY GOVEN NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT; AND
- (3) Any other question which may arise going to the authority of the Minister to make the appointment.

THE TRADE UNION REQUESTED THE MINISTER TO APPOINT A CONCILIATION OFFICER UNDER SECTION 13 OF THE ACT.

AT THE HEARING IN THIS MATTER IT WAS AGREED THAT, PROVIDED THE TRADE UNION WAS ENTITLED TO DO SO, IT HAD PROPERLY GIVEN NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE LABOUR RELATIONS ACT.

THE TRADE UNION RELIES ON A DOCUMENT DATED APRIL 30, 1962 AND WHICH HEADED AS FOLLOWS:

"THIS COLLECTIVE AGREEMENT

MADE THIS FIRST DAY OF MAY, 1962

BETWEEN

THE GENERAL CONTRACTORS SECTION OF THE LONDON BUILDERS EXCHANGE HEREINAFTER CALLED THE EMPLOYER

AND

THE WESTERN ONTARIO DISTRICT COUNCIL
OF THE UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA A.F.L.-C.I.O.C.L.C.

HEREINAFTER CALLED THE UNION."

THERE FOLLOW FIVE PAGES CONTAINING ARTICLES NUMBERED 1 TO 11 AND WHICH DEAL WITH RECOGNITION OF THE TRADE UNION BY THE EMPLOYER, THE DURATION OF THE AGREEMENT, WORKING HOURS, TRAVEL ALLOWANCES, GRIEVANCE AND ARBITRATION PROCEDURE AND OTHER MATTERS, INCLUDING A PROVISION AGAINST STRIKES OF LOCKOUTS AND A MANAGEMENT RIGHTS CLAUSE. THERE THEN FOLLOWS THE HEADING:

## "APPENDIX TO CARPENTERS AGREEMENT"

AFTER WHICH ARE FIVE FURTHER PAGES CONTAINING ARTICLES NUMBERED 1 TO 9 AND WHICH DEAL WITH HIRING AND LAYOFFS, WAGES AND VACATION WITH PAY, TRAVEL ALLOWANCE AND OTHER MATTERS. THE DOCUMENT BEARS THE SIGNATURES OF THREE PERSONS SIGNING "ON BEHALF OF GENERAL CONTRACTORS - CARPENTERS SECTION OF THE LONDON BUILDERS EXCHANGE"

AND OF THREE PERSONS SIGNING "ON BEHALF OF THE WESTERN ONTARIO DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. AFL-CIO-CLC."

THE ABOVE DESCRIBED DOCUMENT, WHICH FORMED A PART OF EXHIBIT 1 FILED IN THIS MATTER, WILL BE DESCRIBED AS THE "CARPENTERS AGREEMENT". EXHIBIT 1 CONTAINS AS WELL ONE PAGE PRECEDING THE PAGES ABOVE DESCRIBED AND WHICH BEARS THE FOLLOWING HEADING:

"COLLECTIVE AGREEMENT

BETWEEN

THE BUILDERS' EXCHANGE (CITY OF LONDON)

AS PARTY OF THE FIRST PART

AND

THE BUILDING AND CONSTRUCTION TRADES COUNCIL

(OXFORD, PERTH, HURON, MIDDLESEX, BRUCE & ELGIN COUNTIES)

AS PARTY OF THE SECOND PART".

THERE FOLLOW THREE ARTICLES DEALING WITH CRAFT JURISDICTION. JURISDICTIONAL DISPUTES AND A LABOUR-MANAGEMENT COMMITTEE. THIS DOCUMENT WHICH WILL BE DESCRIBED AS THE "COUNCIL AGREEMENT" IS NEITHER DATED NOR SIGNED, ALTHOUGH IT BEARS THE INITIALS OF ONE OF THE PERSONS WHO SIGNED THE DOCUMENT DESCRIBED IN PARAGRAPH 3 ABOVE ON BEHALF OF THE GENERAL CONTRACTORS SECTION OF THE Builders Exchange and the initials of one of the persons who HAD SIGNED ON BEHALF OF THE WESTERN ONTARIO DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS. ALTHOUGH THIS DOCUMENT ITSELF IS NOT SIGNED AND NO PROVISION FOR SIGNATURE APPEARS, REFERENCE MAY BE MADE TO EXHIBIT 2. A BOOKLET PREPARED BY THE LONDON BUILDERS' EXCHANGE AND WHICH PURPORTS TO CONTAIN A COLLECTIVE AGREEMENT MADE BETWEEN THE EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL. THE FIRST THREE ARTICLES REPRODUCED IN THIS BOOKLET ARE (SAVE FOR CERTAIN DISCREPANCIES) THE FIRST THREE ARTICLES OF THE "COUNCIL AGREEMENT". FOLLOWING THESE ARTICLES, THE BOOKLET INDICATES TWO PERSONS AS HAVING "SIGNED ON BEHALF OF THE BUILDERS' EXCHANGE OF LONDON" AND TWO PERSONS AS HAVING "SIGNED ON BEHALF OF THE BUILDING AND CONSTRUC-TION TRADES COUNCIL". NO ORIGINAL DOCUMENT WAS PRODUCED BEARING SUCH SIGNATURES. THE BOARD'S INTERPRETATION OF THE DOCUMENTS HERE IN ISSUE, HOWEVER, DOES NOT TURN ON THE ABSENCE OF SIGNED ORIGINAL DOCUMENTS IN ANY CASE.

THE "CARPENTERS AGREEMENT" APPEARS TO BE A COLLECTIVE AGREEMENT AND COUNSEL FOR THE TRADE UNION ARGUED THAT IN FACT IT WAS. HE SUBMITTED THAT THE "COUNCIL AGREEMENT" FORMS AT BEST A PART OF THE "CARPENTERS AGREEMENT". COUNSEL FOR THE EMPLOYER SUBMITTED THAT EXHIBIT 1 IN ITS ENTIRETY CONSTITUTED A COLLECTIVE AGREEMENT AND THAT IT WAS A COLLECTIVE AGREEMENT BETWEEN THE LONDON BUILDERS' EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL. IT WAS NOT SUGGESTED THAT THE "COUNCIL AGREEMENT"

(THE FIRST PAGE OF EXHIBIT 1), STANDING BY ITSELF, CONSTITUTED A COLLECTIVE AGREEMENT.

NOTHING IN THE EVIDENCE SUPPORTS THE CONCLUSION THAT THE "CARPENTERS AGREEMENT" WAS EXECUTED BY THE SIGNATORIES AS AGENTS OF THE BUILDING TRADES COUNCIL. NOWHERE DOES IT APPEAR THAT THE DOCUMENT IS IN SOME SENSE SUBSIDIARY TO ANY OTHER DOCUMENT. IT IS TRUE THAT THERE IS A REFERENCE IN THE "CARPENTERS AGREEMENT" TO A LABOUR-MANAGEMENT COMMITTEE AND IT WOULD APPEAR THAT BY THIS IS MEANT THE COMMITTEE CONSTITUTED UNDER THE "COUNCIL AGREEMENT". IN OUR OPINION, HOWEVER, THE MOST REASONABLE INTERPRETATION OF THIS IS THAT THE ONE-PAGE DOCUMENT SHOULD BE READ AS A PART OF THE "CARPENTERS AGREEMENT" AND NOT VICE VERSA.

Counsel for the EMPLOYER SUBMITTED THAT IN FACT THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE LONDON BUILDERS! EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL AND THAT THIS AGREEMENT CONSISTED OF THREE PARTS, NAMELY: (A) PROVISIONS WITH RESPECT TO CRAFT JURISDICTION, JURISDICTIONAL DISPUTES AND THE LABOUR-MANAGEMENT COMMITTEE; (B) "STANDARD" ARTICLES OF AGREEMENT; AND (C) INDIVIDUAL TRADE APPENDICES. SOME SUPPORT FOR THIS SUBMISSION MAY BE FOUND IN THE MANNER IN WHICH BARGAINING TOOK PLACE IN THE NEGOTIATION OF EXHIBIT 1. THE TRADE UNION ALONG WITH OTHERS WAS A MEMBER OF THE BUILDING AND CONSTRUCTION TRADES COUNCIL. THE BUILDING AND CONSTRUCTION TRADES COUNCIL ENGAGED IN DISCUSSIONS WITH THE LONDON BUILDERS! EXCHANGE WITH RESPECT TO THE MATTER IN (A) AND (B) ABOVE. INDIVIDUAL TRADE UNIONS ENGAGED IN DISCUSSIONS WITH ONE OF THE SEVERAL SECTIONS OF THE BUILDERS! EXCHANGE WITH RESPECT TO MATTERS CONTAINED IN (c) ABOVE. IT IS WORTHY OF NOTE THAT IN SOME CASES THE TRADE APPENDICES CONTAIN PROVISIONS MODIFYING THE PROVISIONS OF THE STANDARD ARTICLES. THE IMPORTANT QUESTION FOR OUR PURPOSES. HOWEVER, IS NOT HOW THE BARGAINING WAS CONDUCTED, BUT RATHER WHO WERE THE PRINCIPALS ON WHOSE BEHALF IT WAS CONDUCTED? THE EVIDENCE IS CLEAR THAT BEFORE THE NEGOTIATIONS WHICH LEAD TO THE EXECUTION OF EXHIBIT 1, THAT IS, BEFORE 1962, THE CARPENTERS Union was the bargaining agent for carpenters in the employ of THE EMPLOYER. THE EVIDENCE FURTHER ESTABLISHES THAT THESE BARGAINING RIGHTS HAVE NOT BEEN AND WERE NOT AT ANY TIME TRANSFERRED TO ANY OTHER BARGAINING AGENT AND IN PARTICULAR THAT NEITHER BARGAINING RIGHTS NOR THE AUTHORITY TO MAKE A BINDING COLLECTIVE AGREEMENT WERE TRANSFERRED TO THE BUILDING AND Construction Trades Council. In every case each trade union HAD THE RIGHT TO REFUSE TO BE BOUND BY ANY PROVISION HOWEVER NEGOTIATED, AND IT WAS IN ITS OWN RIGHT THAT EACH OF THESE ORGANIZATIONS EXECUTED A COLLECTIVE AGREEMENT IN 1962.

The Board finds that there was a collective agreement entered into between the employer and the trade union effective May 1st, 1962 and expiring April 30th, 1965 and that the trade

UNION WAS ENTITLED TO GIVE NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.

THE BOARD FURTHER FINDS - AND THE MATTER IS NOT IN DISPUTE - THAT THE TRADE UNION PROPERLY GAVE NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40.

IT WAS SUBMITTED BY COUNSEL FOR THE EMPLOYER THAT DURING 1965 BARGAINING HAD TAKEN PLACE BETWEEN THE BUILDERS! EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL AND THAT THEREFORE THE TRADE UNION WAS NOW PREVENTED FROM BARGAINING INDIVIDUALLY WITH THE EMPLOYER. WHILE THERE WERE DISCUSSIONS BETWEEN THE BUILDERS EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL DIRECTED TO THE MATTERS OF CRAFT JURISDICTION, JURISDICTIONAL DISPUTES, THE LABOUR-MANAGEMENT COMMITTEE AND THE STANDARDIZATION OF AS MANY ARTICLES OF THE AGREEMENTS CONCERNED AS POSSIBLE. THE BOARD FINDS THAT THERE WAS IN FACT NO AUTHORIZATION GIVEN BY THE TRADE UNION TO THE BUILDING AND CONSTUCTION TRADES COUNCIL TO MAKE A COLLECTIVE AGREEMENT WHICH WOULD BE BINDING ON THE TRADE UNION. HOWEVER, EVEN IF THERE HAD BEEN SUCH AUTHORIZATION. IT IS CLEAR ON THE EVIDENCE THAT AS CONTEMPLATED BY SECTION 38 (4) OF THE ACT, THE TRADE UNION HAS NOTIFIED THE EMPLOYER OR EMPLOYERS ORGANIZATION IN WRITING BEFORE ANY AGREEMENT HAS BEEN ENTERED INTO THAT IT WILL NOT BE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE COUNCIL OF TRADE UNIONS AND THE EMPLOYER OR EMPLOYERS! ORGANIZATION. THE BOARD DOES NOT ACCEPT THE ARGUMENT OF COUNSEL FOR THE EMPLOYER THAT IN SUCH CIRCUMSTANCES THE COUNCIL OF TRADE UNIONS WOULD HAVE ACQUIRED A "VESTED INTEREST" IN THE BARGAINING RIGHTS OF THE TRADE UNION.

On the QUESTIONS REFERRED TO THE BOARD BY THE MINISTER, THE BOARD FINDS AS FOLLOWS:

- (1) THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYER
  TO BARGAIN COLLECTIVELY WITH IT.
- (2) THE TRADE UNION HAS PROPERLY GIVEN NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.
- (3) THE MINISTER HAS AUTHORITY TO MAKE THE APPOINTMENT. "

10363-65-M: BRICKLAYERS AND STONEMASONS UNION No. 5 ONTARIO (TRADE UNION) v. Masonry Contractors Section of the London Builders Exchange (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference by the Minister of Labour pursuant to section 79a of the Act of the Questions:

(1) WHETHER THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN COLLECTIVELY WITH IT;

- (2) WHETHER THE TRADE UNION HAS PROPERLY GIVEN NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT; AND
- (3) Any other question which may arise going to the authority of the Minister to make the appointment.

The trade union requested the Minister to appoint a conciliation officer under section 13 of the Act.

At the hearing in this matter it was agreed that, provided the trade union was entitled to do so, it had properly given notice to the employer pursuant to section 40 of The Labour Relations Act.

THE TRADE UNION RELIES ON A DOCUMENT DATED APRIL 30, 1962 AND WHICH IS HEADED AS FOLLOWS:

"THIS COLLECTIVE AGREEMENT MADE THIS FIRST DAY OF MAY 1962
BETWEEN
GENERAL CONTRACTORS SECTION

OF
THE LONDON BUILDERS EXCHANGE
HEREINAFTER CALLED THE EMPLOYER
AND

THE BRICKLAYERS' AND STONEMASONS'
UNION NO. 5 - ONTARIO
HEREINAFTER CALLED THE UNION".

(IT IS AGREED THAT THE NAME "GENERAL CONTRACTORS SECTION" WAS AN ERROR, AND THAT IT SHOULD BE CORRECTED TO READ "MASONRY CONTRACTORS SECTION".)
THERE FOLLOW SIX PAGES CONTAINING ARTICLES NUMBERED 1 TO 11 AND WHICH DEAL WITH RECOGNITION OF THE TRADE UNION BY THE EMPLOYER, THE DURATION OF THE AGREEMENT, WORKING HOURS, TRAVEL ALLOWANCES, GRIEVANCE AND ARBITRATION PROCEDURE AND OTHER MATTERS, INCLUDING A PROVISION AGAINST STRIKES OR LOCKOUTS AND A MANAGEMENT RIGHTS CLAUSE. THERE THEN FOLLOWS THE HEADING:

"TRADE APPENDIX TO BRICKLAYERS & STONEMASONS AGREEMENT" AFTER WHICH ARE NINE FURTHER PAGES CONTAINING ARTICLES NUMBERED 1 TO 12 AND WHICH DEAL WITH THE AREA OF THE AGREEMENT, THE ESTABLISHMENT OF A JOINT CONFERENCE BOARD, HIRING AND LAYOFFS, WAGES AND VACATIONS WITH PAY, TRAVEL ALLOWANCE AND OTHER MATTERS. THE DOCUMENT BEARS THE SIGNATURES OF TWO PERSONS SIGNING "ON BEHALF OF THE MASONRY CONTRACTORS SECTION OF THE LONDON BUILDERS EXCHANGE" AND OF THREE PERSONS SIGNING "ON BEHALF OF THE BRICKLAYERS AND STONE MASONS UNION No. 5 - ONTARIO".

The above described document, which formed a part of Exhibit 25 filed in this matter, will be described as the "Brick-Layers Agreement". Exhibit 25 contains as well two pages preceding the pages above described and which bear the following heading:

"COLLECTIVE AGREEMENT Between

THE BUILDERS' EXCHANGE (CITY OF LONDON)
AS THE PARTY OF THE FIRST PART

AND

THE BUILDING AND CONSTRUCTION TRADES COUNCIL (OXFORD, PERTH, HURON, MIDDLESEX, BRUCE & ELGIN COUNTIES)

AS THE PARTY OF THE SECOND PART".

THERE FOLLOW THREE ARTICLES DEALING WITH CRAFT JURISDICTION. JURISDICTIONAL DISPUTES AND A LABOUR-MANAGEMENT COMMITTEE. THIS DOCUMENT WHICH WILL BE DESCRIBED AS THE "COUNCIL AGREEMENT" IS NEITHER DATED NOR SIGNED, ALTHOUGH IT BEARS THE INITIALS OF ONE OF THE PERSONS WHO SIGNED THE DOCUMENT DESCRIBED IN PARAGRAPH 3 ABOVE ON BEHALF OF THE MASONRY CONTRACTORS SECTION OF THE Builders! Exchange and the initials of one person who had SIGNED ON BEHALF OF THE BRICKLAYERS! UNION LOCAL No. 5. ALTHOUGH THIS DOCUMENT ITSELF IS NOT SIGNED AND NO PROVISION FOR SIGNATURE APPEARS, REFERENCE MAY BE MADE TO EXHIBIT 2, A BOOKLET PREPARED BY THE LONDON BUILDERS EXCHANGE AND WHICH PURPORTS TO CONTAIN A COLLECTIVE AGREEMENT MADE BETWEEN THE EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL. THE FIRST THREE ARTICLES REPRODUCED IN THIS BOOKLET ARE (SAVE FOR CERTAIN DISCREPANCIES) THE FIRST THREE ARTICLES OF THE "COUNCIL AGREEMENT". FOLLOWING THESE ARTICLES, THE BOOKLET INDICATES TWO PERSONS AS HAVING "SIGNED ON BEHALF OF THE BUILDERS! EXCHANGE OF LONDON" AND TWO PERSONS AS HAVING "SIGNED ON BEHALF OF THE BUILDING AND CONSTRUCTION TRADES COUNCIL". NO ORIGINAL DOCUMENT WAS PRODUCED BEARING SUCH SIGNATURES. THE BOARD'S INTERPRETATION OF THE DOCUMENTS HERE IN ISSUE, HOWEVER, DOES NOT TURN ON THE ABSENCE OF SIGNED ORIGINAL DOCUMENTS IN ANY CASE.

THE "BRICKLAYERS AGREEMENT" APPEARS TO BE A COLLECTIVE AGREEMENT AND COUNSEL FOR THE TRADE UNION ARGUED THAT IN FACT IT WAS. HE SUBMITTED THAT THE "COUNCIL AGREEMENT" FORMS AT BEST A PART OF THE "BRICKLAYERS AGREEMENT". COUNSEL FOR THE EMPLOYER SUBMITTED THAT EXHIBIT 25 IN ITS ENTIRETY CONSTITUTED A COLLECTIVE AGREEMENT AND THAT IT WAS A COLLECTIVE AGREEMENT BETWEEN THE LONDON BUILDERS' EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL. IT WAS NOT SUGGESTED THAT THE "COUNCIL AGREE—MENT" (THE FIRST TWO PAGES OF EXHIBIT 25), STANDING BY ITSELF, CONSTITUTED A COLLECTIVE AGREEMENT.

NOTHING IN THE EVIDENCE SUPPORTS THE CONCLUSION THAT THE "BRICKLAYERS AGREEMENT" WAS EXECUTED BY THE SIGNATORIES AS AGENTS OF THE BUILDING TRADES COUNCIL. NOWHERE DOES IT APPEAR THAT THE DOCUMENT IS IN SOME SENSE SUBSIDIARY TO ANY OTHER DOCUMENT. IT IS TRUE THAT THERE IS A REFERENCE IN THE "BRICKLAYERS AGREEMENT" TO A LABOUR-MANAGEMENT COMMITTEE AND IT WOULD APPEAR THAT BY THIS IS MEANT THE COMMITTEE CONSTITUTED UNDER THE "COUNCIL AGREEMENT". IN OUR OPINION, HOWEVER, THE MOST REASONABLE INTERPRETATION OF THIS IS THAT THE TWO-PAGE DOCUMENT SHOULD BE READ AS A PART OF THE "BRICKLAYERS AGREEMENT" AND NOT VICE VERSA.

COUNSEL FOR THE EMPLOYER SUBMITTED THAT IN FACT THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE LONDON BUILDERS! EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL AND THAT THIS AGREEMENT CONSISTED OF THREE PARTS, NAMELY: (A) PROVISIONS WITH RESPECT TO CRAFT JURISDICTION, JURISDICTIONAL DISPUTES AND THE LABOUR-MANAGEMENT COMMITTEE; (B) "STANDARD" ARTICLES OF AGREEMENT; AND (C) INDIVIDUAL TRADE APPENDICES. SOME SUPPORT FOR THIS SUBMISSION MAY BE FOUND IN THE MANNER IN WHICH BARGAINING TOOK PLACE IN THE NEGOTIATION OF EXHIBIT 25. THE TRADE UNION ALONG WITH OTHERS WAS A MEMBER OF THE BUILDING AND CONSTRUCTION TRADES COUNCIL. THE BUILDING AND CONSTRUCTION TRADES COUNCIL ENGAGED IN DISCUSSIONS WITH THE LONDON BUILDERS! EXCHANGE WITH RESPECT TO THE MATTERS IN (A) AND (B) ABOVE. INDIVIDUAL TRADE UNIONS ENGAGED IN DISCUSSIONS WITH ONE OF THE SEVERAL SECTIONS OF THE BUILDERS! EXCHANGE WITH RESPECT TO MATTERS CONTAINED IN (C) ABOVE. IT IS WORTHY OF NOTE THAT IN SOME CASES THE TRADE APPENDICES CONTAIN PROVISIONS MODIFYING THE PROVISIONS OF THE STANDARD ARTICLES. THE IMPORTANT QUESTION FOR OUR PURPOSES. HOWEVER, IS NOT HOW THE BARGAINING WAS CONDUCTED. BUT RATHER WHO WERE THE PRINCIPALS ON WHOSE BEHALF IT WAS CONDUCTED? THE EVIDENCE IS CLEAR THAT BEFORE THE NEGOTIATIONS WHICH LEAD TO THE EXECUTION OF EXHIBIT 25, THAT IS, BEFORE 1962, THE BRICKLAYERS Union was the bargaining agent for bricklayers in the EMPLOY of THE EMPLOYER. THE EVIDENCE FURTHER ESTABLISHES THAT THESE BARGAINING RIGHTS HAVE NOT BEEN AND WERE NOT AT ANY TIME TRANS-FERRED TO ANY OTHER BARGAINING AGENT AND IN PARTICULAR THAT NEITHER BARGAINING RIGHTS NOR THE AUTHORITY TO MAKE A BINDING COLLECTIVE AGREEMENT WERE TRANSFERRED TO THE BUILDING AND CONSTRUCTION TRADES COUNCIL. IN EVERY CASE EACH TRADE UNION HAD THE RIGHT TO REFUSE TO BE BOUND BY ANY PROVISION HOWEVER NEGOTIATED. AND IT WAS IN ITS OWN RIGHT THAT EACH OF THESE ORGANIZATIONS EXECUTED A COLLECTIVE AGREEMENT IN 1962.

THE BOARD FINDS THAT THERE WAS A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE EMPLOYER AND THE TRADE UNION EFFECTIVE MAY 1st, 1962 AND EXPIRING APRIL 30TH, 1965 AND THAT THE TRADE UNION WAS ENTITLED TO GIVE NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.

The Board further finds — and the matter is not in dispute — that the trade union properly gave notice to the employer pursuant to section  $40\,$ .

IT WAS SUBMITTED BY COUNSEL FOR THE EMPLOYER THAT DURING 1965 BARGAINING HAD TAKEN PLACE BETWEEN THE BUILDERS' EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL AND THAT THEREFORE THE TRADE UNION WAS NOW PREVENTED FROM BARGAINING INDIVIDUALLY WITH THE EMPLOYER. WHILE THERE WERE DISCUSSIONS BETWEEN THE BUILDERS' EXCHANGE AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL DIRECTED TO THE MATTERS OF CRAFT JURISDICTION, JURISDICATIONAL DISPUTES, THE LABOUR-MANAGEMENT COMMITTEE AND THE STANDARDIZATION OF AS MANY ARTICLES OF THE AGREEMENTS CONCERNED

AS POSSIBLE, THE BOARD FINDS THAT THERE WAS INFACT NO AUTHORIZATION GIVEN BY THE TRADE UNION TO THE BUILDING AND CONSTRUCTION TRADES COUNCIL TO MAKE A COLLECTIVE AGREEMENT WHICH WOULD BE BINDING ON THE TRADE UNION. HOWEVER, EVEN IF THERE HAD BEEN SUCH AUTHORIZATION, IT IS CLEAR ON THE EVIDENCE THAT AS CONTEMPLATED BY SECTION 38(4) OF THE ACT, THE TRADE UNION HAS NOTIFIED THE EMPLOYER OR EMPLOYERS! ORGANIZATION IN WRITING BEFORE ANY AGREEMENT HAS BEEN ENTERED INTO THAT IT WILL NOT BE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE COUNCIL OF TRADE UNIONS AND THE EMPLOYER OR EMPLOYERS! ORGANIZATION. THE BOARD DOES NOT ACCEPT THE ARGUMENT OF COUNSEL FOR THE EMPLOYER THAT IN SUCH CIRCUMSTANCES THE COUNCIL OF TRADE IJNIONS WOULD HAVE ACQUIRED A "VESTED INTEREST" IN THE BARGAINING RIGHTS OF THE TRADE UNION.

On the questions referred to the Board by the Minister the Board finds as follows:

- (1) THE TRADE UNION IS ENTITLED TO REQUIRE THE EMPLOYER TO BARGAIN COLLECTIVELY WITH IT.
- (2) THE TRADE UNION HAS PROPERLY GIVEN NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT.
- (3) THE MINISTER HAS AUTHORITY TO MAKE THE APPOINTMENT."

10367-65-M: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 91 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Trade Union) v. Dominion Building Materials Limited (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This matter was referred to the Board by the Minister, under the provisions of section 79a of The Labour Relations Act.

The question before the Board is whether the trade union has properly given notice to the employer pursuant to section  $40\,$  of the Act.

The following facts were agreed to by the parties. The trade union and the employer were parties to a collective agreement made the 17th day, of July, 1963. The duration clause contained in the collective agreement is set out in Article 16 which reads as follows:

"Unless changed by mutual consent, the terms of this Agreement shall continue in effect until the 28th day of February, 1965, and shall continue automatically thereafter for annual periods of one year each, unless either party notifies the other in writing within the period of two months immediately

PRIOR TO THE EXPIRATION DATE THAT IT DESIRES TO AMEND THE AGREEMENT.

NEGOTIATIONS SHALL BEGIN WITHIN FIFTEEN DAYS FOLLOWING NOTIFICATION FOR AMENDMENT AS PROVIDED IN THE PRECEDING PARAGRAPH.

IF, PURSUANT TO SUCH NEGOTIATIONS, AN AGREEMENT IS NOT REACHED ON THE RENEWAL OR AMENDMENT OF THIS AGREEMENT, OR THE MAKING OF A NEW AGREEMENT PRIOR TO THE CURRENT EXPIRY DATE, THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL A NEW AGREEMENT IS SIGNED BETWEEN THE PARTIES, OR UNTIL CONCILIATION PROCEEDINGS PRESCRIBED UNDER THE ONTARIO LABOUR RELATIONS ACT, 1950, HAVE BEEN COMPLETED, WHICHEVER DATE SHOULD FIRST OCCUR."

THE TRADE UNION, BY LETTER DATED THE 26TH DAY OF FEBRUARY, 1965, NOTIFIED THE EMPLOYER THAT IT DESIRED TO NEGOTIATE A NEW COLLECTIVE AGREEMENT. THE TRADE UNION MAILED THIS LETTER TOGETHER WITH ITS PROPOSALS TO THE EMPLOYER BY REGISTERED POST ON SATURDAY, THE 25TH DAY OF FEBRUARY, 1965. THE NOTICE TO BARGAIN WAS RECEIVED BY THE EMPLOYER ON MONDAY, THE 1ST DAY OF MARCH, 1965.

HAVING REGARD TO THE DECISION OF THE BOARD IN <u>BARWOOD</u>
SALES (ONTARIO) <u>Limited</u> O.L.R.B. Monthly Report, November, 1961,
p. 292, THE BOARD FINDS THAT THE WORDS "SHALL CONTINUE IN EFFECT
UNTIL THE 28TH DAY OF FEBRUARY, 1965" AS CONTAINED IN ARTICLE
16 OF THE COLLECTIVE AGREEMENT, AS INCLUSIVE OF THE DATE OF THE
28TH DAY OF FEBRUARY, 1965.

THE BOARD FURTHER FINDS THAT THE PHRASE "WITHIN THE PERIOD OF TWO MONTHS IMMEDIATELY PRIOR TO THE EXPIRATION DATE" AS CONTAINED IN ARTICLE 16 OF THE COLLECTIVE AGREEMENT, HAS THE SAME MEANING AND EFFECT AS THE PHRASE "WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASES TO OPERATE" AS CONTAINED IN SECTION 40 (1) OF THE ACT. ACCORDINGLY, "THE EXPIRATION DATE", OR THE "DATE THE AGREEMENT CEASED TO OPERATE", OR THE DATE THE AGREEMENT "SHALL CONTINUE IN EFFECT UNTIL" WAS THE 28TH DAY OF FEBRUARY, 1965.

IN THE CIRCUMSTANCES OF THIS CASE, WRITTEN NOTICE TO BARGAIN SERVED ON THE 28TH DAY OF FEBRUARY, 1965, OR ON ANY DAY DURING THE MONTHS OF JANUARY AND FEBRUARY, 1965, WOULD BE GOOD AND SUFFICIENT SERVICE. (SEE BARWOOD SALES (ONTARIO) LIMITED).

However, the 28th day of February, 1965, fell on a Sunday. Section 27 (H) of The Interpretation Act R.S.O. 1960, ch. 191 Reads as follows:

"WHERE THE TIME LIMITED BY AN ACT FOR A PROCEEDING OR FOR THE DOING OF ANYTHING UNDER ITS PROVISIONS EXPIRES OR FALLS

UPON A HOLIDAY, THE TIME SO LIMITED EXTENDS TO AND THE THING MAY BE DONE ON THE DAY NEXT FOLLOWING THAT IT IS NOT A HOLIDAY"

Section 30 (10) of The Interpretation Act provides that "Holiday" INCLUDES SUNDAY.

THE TIME LIMITED FOR SERVING A NOTICE UNDER THE COLLECTIVE AGREEMENT WHICH EXPIRED ON SUNDAY, THE 28TH DAY OF FEBRUARY, 1965, BEING A NOTICE GIVEN PURSUANT TO THE PROVISIONS OF SECTION 40 (2) OF THE ACT, IS ACCORDINGLY EXTENDED BY VIRTUE OF THE INTERPRETATION ACT, TO MONDAY, THE 1ST DAY OF MARCH, 1965.

Since the employer received the trade union's notice to bargain on Monday, the 1st day of March, 1965, such notice to bargain was good and sufficient notice pursuant to the provisons of the collective agreement and by virtue of the operation of section 40 (2) of the Act such notice is deemed to comply with section 40(1) of the Act.

THE ANSWER TO THE QUESTION REFERRED TO THE BOARD IS YES, THE TRADE UNION HAS PROPERLY GIVEN NOTICE TO THE EMPLOYER PURSUANT TO SECTION 40 OF THE ACT."

#### INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION

# SECTION 65

10165-64-U: United Packinghouse, Food and Allied Workers (Complainant) v. Norfish Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent has requested the Board, in its LETTER dated June 18th, 1965, to reconsider its decision of June 4th, 1965, in this matter.

ALL OF THE ISSUES RAISED BY THE RESPONDENT IN ITS LETTER WERE CONSIDERED BY THE BOARD PRIOR TO MAKING ITS DECISION OF JUNE 4TH, 1965. IN ISSUING THE MAJORITY DECISION THE BOARD WAS OF OPINION THAT BECAUSE OF THE CONFLICT OF INTEREST WHICH WOULD ARISE IF THE CANADIAN POULTRY WORKERS! UNION WERE REQUIRED TO PROCESS A GRIEVANCE ON BEHALF OF THE AGGRIEVED PERSONS WHO WERE DISCHARGED FOR SUPPORTING AN OPPOSING TRADE UNION, THE AGGRIEVED PERSONS SHOULD NOT BE COMPELLED TO PROCESS A GRIEVANCE PURSUANT TO THE PROVISIONS OF THE GRIEVANCE PROCEDURE OUTLINED IN ANY COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN POULTRY WORKERS! UNION.

Since the respondent has not alleged that there is new evidence now available to it which was not available at the time of the hearing of this Complaint, the Board is of opinion that it should not reconsider, vary or revoke its decision of June 4th, 1965, in this matter.

THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED."

# TRUSTEESHIP REPORT

T-23-65 United Steelworkers of America, Local 5463, at Port Arthur. Report filed under date of June 22, 1965, by D.M. Storey, Legislative Director, Stated that the charter of this Local has been cancelled and that the Local is no Longer in existence.

## STATISTICAL TABLES FOR JUNE 1965

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed			
		JUNE 1965	1st 3 Months of 1965-66	FISCAL YEAR 1964-65	
1.	CERTIFICATION	89	280	225	
11.	Declaration Terminating Bargaining Rights	6	19	23	
111.	Declaration of Successor Status	3	5	1	
IV.	Declaration That Strike Unlawful	11	22	12	
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	1	
VI.	Consent to Prosecute	8	19	17	
V11.	Complaint of Unfair Practice in Employment (Section 65)	17	41	27	
VIII.	MISCELLANEOUS	3	19	4	
	TOTAL	137	405	310	

TABLE 11
HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER	
		1st 3 Months 1965-66	OF FISCAL YEAR 1964-65
HEARINGS AND CONTINUATION OF			
HEARINGS BY THE BOARD	129	341	301

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

			Number Disposed of			
		June 1965	1st 3 MTHS OF	FISCAL YR		
1 .	CERTIFICATION	98	281	218		
11.	Declaration Terminating Bargaining Rights	10	18	32		
1110	Declaration of Successor Status	3	8	4		
10.	Declaration That Strike Unlawful	10	17	11		
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	1		
VI.	Consent to Prosecute	-	12	14		
VII.	Complaint of Unfair Practice in Employment (Section 65)	17	36	40		
VIII.	MISCELLANEOUS	3	38	5		
	TOTAL	141	410	325		

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION

	Number of Applications				Number of applications*		
	JUNE 1965		Fiscal Yr. 1964-65	JUNE 1965	1st 3 Mths		
I. CERTIFICATION							
GRANTED Dismissed Withdrawn	68 24 6	214 50 <u>17</u>	155 41 22	1785 654 <u>81</u>	6764 2605 1238	6012 3256 960	
TOTAL	<u>98</u>	281	218	<u>2520</u>	10611	10228	
II. TERMINATION OF BARGAINING RIGHTS							
Granted Dismissed Withdrawn	4 5 1	5 11 2	19 11 2	75 81 <u>43</u>	87 232 <u>73</u>	208 259 <u>82</u>	
TUTAL	10	18	32	199	392	<u>549</u>	

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIR TTOY

AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES OF THE

BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR

CERTIFICATION WERE FILED WITH THE EVARD. TOTALS FOR

APPLICATIONS DISMISSED AND WITHDRAW. ARE APPROXIMATE.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			NUMBER OF APPL	LICATIONS
		JUNE 1965	1st 3 Mths	FISCAL Y 1964-65
111.	DECLARATION THAT STRIKE UNLAWFUL			
	GRANTED DISMISSED WITHDRAWN	5 	5 	6 2 3
	TOTAL	10	17	11
1V.	DECLARATION THAT LOCKOUT UNLAWFUL			
	Granted Dismissed Withdrawn	- - -		
	TOTAL		-	1
٧.	CONSENT TO PROSECUTE			
	Granted Dismissed Withdrawn		1 2 _9	2 2 10
	TOTAL		12	14

TABLE V

# REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE

#### ONTARIO LABOUR RELATIONS BOARD

	Number of Votes			
	JUNE 1965	1st 3 MTHs 1965-66	FISCAL YR. 1964-65	
CERTIFICATION AFTER VOTE*				
PRE-HEARING VOTE	3	8	7	
POST-HEARING VOTE	3	9	7	
BALLOTS NOT COUNTED	-	steel	-	
DISMISSED AFTER VOTE				
Pre-Hearing Vote	nen.	1	3	
POST-HEARING VOTE	3	6	18	
Ballots Not Counted	number (date)	_1	-	
TOTAL	9	25	35	

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

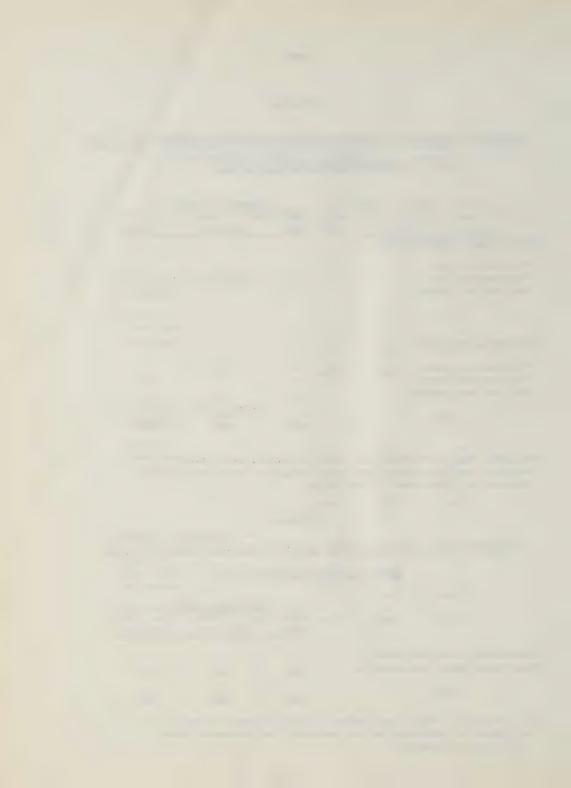
#### TABLE VI

# REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE

#### ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	JUNE 1965	1st 3 Mths 1965-66	FISCAL YRS. 1964-65
*Respondent Union Successful Respondent Union Unsuccessful	1 4	1 _ <u>5</u>	<u>-</u>
TOTAL	_5	6	_6

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.





# ONTARIO LABOUR RELATIONS BOARD



## CASE LISTINGS JULY 1965

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JULY 1965

#### BARGAINING AGENTS CERTIFIED DURING JULY

#### No VOTE CONDUCTED

10108-64-R: United SteeLworkers of America (Applicant) v. Linread Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"For the reasons given in writing we are satisfied on the basis of all the evidence before us that more than fifty-five per cent of the employees of the respondent in the bar-gaining unit, at the time the application was made, were members of the applicant at the material times fixed in accordance with the Labour Relations Act and the Board's Rules of Procedure."

BOARD MEMBER M. C. HAY DISSENTED AND SAID:-

"| DISSENT.

FOR REASONS GIVEN IN WRITING I WOULD HAVE GIVEN EFFECT TO THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION AND WOULD HAVE DIRECTED A REPRESENTATION VOTE IN THIS CASE. I WOULD ALSO HAVE PERMITTED THE WITNESSES CALLED BY THE RESPONDENT TO BE ASKED THE QUESTION PROPOSED BY THE SOLICITOR FOR THE RESPONDENT."

10406-65-R: United Steelworkers of America (Applicant) v. Caland Ore Company Limited (Respondent). (11 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant and the respondent are bound by a collective agreement effective from February 13th, 1963 to September 1, 1965. By the terms of the agreement the bespondent recognizes the applicant as the sole collective bargaining agency for all its employees as defined in the description of the bargaining unit which reads:

THE TERM "EMPLOYEE" AS USED IN THIS ARTICLE APPLIES TO THE BARGAINING UNIT EMPLOYEES OF CALAND ORE COMPANY LIMITED AT FALLS BAY OF STEEP ROCK LAKE IN THE TOWNSHIP OF SCHWENGER, ENGAGED IN THE

DEVELOPMENT AND MINING OPERATIONS, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN, ASSISTANT CHIEF CHEMISTS, AND PERSONS ABOVE THE RANK OF SHIFT BOSS, FOREMAN OR ASSISTANT CHIEF CHEMIST, OFFICE STAFF, LABORATORY STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD, AND EMPLOYEES IN THE ENGINEERING AND GEOLOGICAL DEPARTMENTS OTHER THAN SAMPLERS.

THE APPLICANT IS APPLYING FOR A TAG END UNIT COMPOSED OF ELEVEN EMPLOYEES WHO ARE CATEGORIZED BY THE RESPONDENT AS SUPPLY MEN, WAREHOUSE CLERKS AND FIRST AID MEN. THERE IS NO DISPUTE BETWEEN THE PARTIES THAT THE ABOVE CATEGORIES OF PERSONS ARE "EMPLOYEES". THERE HAS BEEN, HOWEVER, A DISPUTE BETWEEN THE PARTIES AS TO WHETHER THESE CATEGORIES OF EMPLOYEES ARE COVERED BY THE DESCRIPTION OF THE BARGAINING UNIT IN THE COLLECTIVE AGREEMENT. THE APPLICANT HAS TAKEN THE POSITION THAT THESE EMPLOYEES ARE COVERED BY THE COLLECTIVE AGREEMENT AND THE RESPONDENT HAS MAINTAINED THAT THEY ARE NOT COVERED BY THE COLLECTIVE AGREEMENT.

AT THE HEARING OF THIS APPLICATION ON JUNE 1ST, 1965, THE RESPONDENT CONCEDED THAT THE SUPPLY MEN ARE COVERED BY THE COLLECTIVE AGREEMENT BUT MAINTAINED THAT THE WAREHOUSE CLERKS AND FIRST AID MEN ARE EXCLUDED FROM THE BARGAINING UNIT AS OFFICE STAFF. THE BOARD ACCORDINGLY APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THOSE EMPLOYEES FALLING IN THE CATEGORIES OF WAREHOUSE CLERKS AND FIRST AID MEN.

By Letter dated June 11, 1965 addressed to the Board, counsel for the respondent conceded that warehouse clerks and dry men (in-cluding those dry men presently performing first aid duties) are within the scope of the existing bargaining unit described in the collective agreement between the parties.

HAVING REGARD TO THE FACT THAT THE RESPONDENT AGREES THAT ALL OF THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION IN THIS APPLICATION ARE ALREADY COVERED BY THE COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE PARTIES, THIS APPLICATION IS TERMINATED."

10408-65-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. CRANE SUPPLY DIVISION, CRANE CANADA LIMITED (RESPONDENT

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSON ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

 $\frac{10510-65-R}{(RESPONDENT)}$ . SIMPSON PLANT COUNCIL (APPLICANT) v. A. G. SIMPSON COMPANY LIMITED

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(88 EMPLOYEES IN THE UNIT).

10513-65-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MIRON-WIGGERS CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

On the basis of the written representations of the parties, the Board Found that the collective agreement dated April 30th, 1965, between the applicant and the respondent does not cover the employees affected by this application.

10514-65-R: United GLASS AND CERAMIC WORKERS OF NORTH AMERICA (APPLICANT) v. SEAFORTH PIPE CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

 $\frac{10523-65-R}{v}$ : International Union of Operating Engineers, Local 793 (Applicant) v. Lyons Fuel Hardware and Supplies Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(21 EMPLOYEES IN THE UNIT).

10543-65-R: Building Service Employees! International Union, Local No. 204, AFL-C10-CLC (Applicant) v. Dufferin Area Hospital (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT ORANGEVILLE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD," (88 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT "WARD CLERKS" ARE NOT INCLUDED IN THE CLASSIFICATION OF "OFFICE STAFF", THE BOARD THEREFORE DECLARED THAT "WARD CLERKS" ARE INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

10546-65-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Ault Cheese Co. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINCHESTER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

10550-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 339 (APPLICANT) v. ACE MOTOR ELECTRIC (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

10554-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. West York Construction Co. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN HOLLAND TOWNSHIP IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

IN THE ABSENCE OF ANY EVIDENCE RESPECTING PATTERNS OF COLLECTIVE BARGAINING AFFECTING THE COUNTY OF GREY, THE BOARD IS NOT PREPARED TO GRANT THE AREA PROPOSED BY THE APPLICANT. THE BOARD IS THEREFORE PREPARED TO SET ONLY A MINIMAL AND INTERIM AREA.

10559-65-R: Bakery & Confectionery Workers' International Union of America, Local 415, London, Ontario (Applicant) v. Jackson's Bakeries Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 22 PEGLER STREET, LONDON, ONTARIO, SAVE AND EXCEPT FOREMEN, FORELADIES AND SUPERVISORS, THOSE ABOVE THE RANK OF FOREMAN, FORELADY AND SUPERVISOR, OFFICE STAFF, GARAGE MECHANICS, GAS PUMP ATTENDANTS, DRIVER SALESMEN, TRANSPORT DRIVERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10560-65-R: General Truck Drivers' Union, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Eastwood Foods Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, COMMISSARY EMPLOYEES, HOSTESS AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10563-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 837 (Applicant) v. William Filsinger (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

In view of the unsettled pattern of collective bargaining for the Hamilton area the Board is not prepared at this time to depart from the minima and interim area which we have granted in recent cases.

10564-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. E. R. Tidman Electric (Respondent).

Unit: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AN INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTER LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

10565-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Bolton Electric (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLOPING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMIT OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON HE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKIN FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10566-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Donald J. MacDonald Construction Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

10567-65-R: United Steelworkers of America (Applicant) v. Diwalt Industries Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (89 EMPLOYEES IN THE UNIT).

10568-65-R: TEXTILE WORKERS UNION OF AMERICA, AFL-C10-CLC (APPLICANT) v. SQUARE "C" TEXTILES LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ALEXANDRIA, SAVE
AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SALES STAFF AND
CONFIDENTIAL SECRETARY TO THE PLANT MANAGER." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10570-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Great Lakes Machinery Installations Ltd. (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(7 EMPLOYEES IN THE UNIT).

10572-65-R: HAMILTON JAIL EMPLOYEES ASSOCIATION (APPLICANT) V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT).

UNIT: "ALL JAIL EMPLOYEES OF THE RESPONDENT AT ITS CITY JAIL AT HAMILTON, SAVE AND EXCEPT LIEUTENANTS, HEAD MATRON, SENIOR MATRON, PERSONS ABOVE THE RANKS OF LIEUTENANT, HEAD MATRON AND SENIOR MATRON." (46 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10574-65-R: International Association of Bridge, Structural and Ornamental Iron-workers, Local Union 721 (Applicant) v. Kalwall (Canada) Limited (Respondent).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMIT OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10575-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 837 (Applicant) v. Robertson-Yates Corporation Limited (Respondent)

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10577-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 749 (Applicant) v. Keillor Pipe Lines (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

THE AREAS PROPOSED BY BOTH THE APPLICANT AND THE RESPONDENT IN THIS CASE DO NOT CORRESPOND TO THE AREA NORMALLY GRANTED BY THE BOARD WHICH CONSISTS OF THE COUNTIES OF ESSEX AND KENT. THIS LATTER AREA IS ONE THAT IS SET HAVING REGARD TO THE ESTABLISHED COLLECTIVE BARGAINING PATTERNS. THE BOARD SEES NO REASON TO DEPART FROM THAT AREA IN THIS CASE.

10578-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Pressure Concrete Services Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, THOSE PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS AND SHOP AND YARD EMPLOYEES."

(2 EMPLOYEES IN THE UNIT).

10584-65-R: International Hod Carriers Building and Common Labourers Union of America (Applicant) v. Sam Cosentino Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10589-65-R: Laundry, Dry Cleaning and Dye House Workers International Union, Local #351 (Applicant) v. Lyle Blackwell Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, DRIVER SALESMEN AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

10590-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. INTERLAKE STEEL PRODUCTS CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT).

10591-65-R: ROLARK CHEQUE SERVICE EMPLOYEES ASSOCIATION (APPLICANT) v. ROLARK CHEQUE SERVICE, DIVISION OF ROLPH CLARK STONE LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT CARLETON PLACE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(29 EMPLOYEES IN THE UNIT).

10595-65-R: Local Union 353, International Brotherhood of Electrical Workers (APPLICANT) v. B & M Electric Co. Ltd. (Respondent).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS! APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(4 EMPLOYEES IN THE UNIT).

The respondent alleges that it has a collective agreement dated June 29th, 1965, with a trade union or council of trade unions. However, the respondent also states that no trade union represents any employees who may be affected by the application. After careful inquiries, the Board is unable to find that there is any collective agreement in operation which would be a bar to this application.

10596-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Artivan Electrical Contractors Ltd. (Respondent).

Unit: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

10597-65-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. TOF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHEMISTS, TECHNOLOGISTS, SALESMEN, NURSES, SECURITY GUARDS, PERSONNEL DEPARTMENT EMPLOYEES, STAFF PAYROLL AND RECORDS CLERK, WORK STANDARDS AND METHODS PERSONNEL, AND SECRETARIES TO THE EXECUTIVE OFFICERS, MANAGEMENT COMMITTEE MEMBERS, PRODUCTION MANAGER, OFFICE MANAGER AND WORKS ENGINEER." (46 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10598-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ryan Builders Supplies Ltd. (Respondent) v. Local Union No. 880 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener).

UNIT: "ALL OPERATING ENGINEERS IN THE EMPLOY OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

10603-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. DETROIT GASKET AND MANUFACTURING (CANADA 1965) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETROLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, OFFICE AND SALES STAFF."
(31 EMPLOYEES IN THE UNIT).

10604-65-R: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine, Mill and Smelter Workers (Applicant) v. The Corporation of the Town of Coniston (Respondent).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT CONISTON, SAVE AND EXCEPT TOWN CLERK, TOWN ENGINEER AND ASSESSOR." (3 EMPLOYEES IN THE UNIT).

10607-65-R: Local #28, International Brotherhood of Bookbinders (Applicant) v. N. A. MacEachern & Co. Ltd., carrying on business under the firm name and style of Thorn Press (Respondent).

UNIT: "ALL JOURNEYMEN AND JOURNEYWOMEN, BOOKBINDERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (11 EMPLOYEES IN THE UNIT).

10610-65-R: The United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Weinbender Building Co. Ltd. (Respondent)

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(For the reasons given by the Board in the Watchler Mfg Co Ltd. Board File No. 10471-65-R.)

10612-65-R: Laundry, Dry Cleaning and Dye House Workers International Union, Local 351 (Applicant) v. Hunters Cleaners Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, ROUTE SALESMEN, RETAIL STORE CLERKS AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT).

10617-65-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. TILCO PLASTICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

10621-65-R: International Union, United Automobile Aerospace and Agricultural implement Workers of America (UAW) (Applicant) v. Burroughs Business Machines Ltd., Graphic Systems Manufacturing Division (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MECHANICAL AND RESEARCH ANALYSTS, CHEMICAL LABORATORY STAFF, AND OFFICE AND SALES STAFF." (89 EMPLOYEES IN THE UNIT).

10622-65-R: International Hod Carriers Building and Common Labourers Union, Local 493 (Applicant) v. Carrington Construction Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

10623-65-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Kingston Dunbrik (1963) Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE KINGSTON TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(6 EMPLOYEES IN THE UNIT).

10625-65-R: United Brotherhood of Carpenters and Joiners of America Local #1071 (Applicant) v. West York Construction (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10626-65-R: International Hod Carriers' Building & Common Labourers' Union of America, Local 1059 (Applicant) v. Valentine Enterprises Contracting (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10627-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Gothic Construction Co. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10630-65-R: Sheet Metal Workers' International Association, Local Union 504 (Applicant) v. Kosmack & Price Limited (Respondent).

UNIT: "ALL SHEET METAL WORKERS, SHEET METAL WORKERS! APPRENTICES AND HELPERS IN TRAINING IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT IS SEEKING CERTIFICATION FOR CERTAIN EMPLOYEES OF THE RESPONDENT WITHIN A 20 MILE RADIUS OF THE NORTH BAY POST OFFICE. THE JOB IN QUESTION IS IN WIDDIFIELD TOWNSHIP. THE RESPONDENT, A PLUMBING, HEATING AND SHEET METAL CONTRACTOR, IS LOCATED IN KIRKLAND LAKE AND IT APPEARS THAT TWO OF ITS REGULAR EMPLOYEES FROM KIRKLAND LAKE ARE ENGAGED ON THE JOB IN WIDDIFIELD TOWNSHIP. THE BALANCE OF THE EMPLOYEES AFFECTED BY THE APPLICATION ARE NOT REGULAR EMPLOYEES OF THE RESPONDENT AND WERE HIRED FOR THIS PARTICULAR JOB. IN CONNECTION WITH THEIR DUTIES ON THE JOB IN WIDDIFIELD TOWNSHIP THE TWO REGULAR EMPLOYEES TRAVEL BACK AND FORTH BETWEEN KIRKLAND LAKE AND NORTH BAY, THAT IS TO SAY, THE NATURE OF THE JOB REQUIRES THEM TO DO WORK IN THE SHOP AT KIRKLAND LAKE FROM TIME TO TIME. THE APPLICANT THEREFORE REQUESTED THAT THE CERTIFICATE COVER THE TWO REGULAR EMPLOYEES WHETHER EMPLOYED IN THE 20 MILE RADIUS FROM THE NORTH BAY POST OFFICE, OR AT KIRKLAND LAKE. IT SHOULD BE NOTED THAT THE AREA SOUGHT IS A REGULAR BOARD AREA, WHEREAS THE BOARD HAS ESTABLISHED A DIFFERENT AREA FOR KIRKLAND LAKE, I.E., THE TOWNSHIP OF TECK AND MUNICIPALITIES ADJACENT THERETO.

The request of the applicant raises the question of the meaning of section  $1(1)(\mathrm{da})$  of the Labour Relations act which provides:

(DA) "CONSTRUCTION INDUSTRY" MEANS THE BUSINESSES
THAT ARE ENGAGED IN CONSTRUCTING, ALTERING,
DECORATING, REPAIRING OR DEMOLISHING
BUILDINGS, STRUCTURES, ROADS, SEWERS,
WATER OR GAS MAINS, PIPE LINES, TUNNELS,
BRIDGES, CANALS OR OTHER WORKS AT THE SITE
THEREOF;

The Question thus raised is this: Are employees who work both at and away from a construction site but who, while away, are employed in connection with the job in Question, to be included in the bargaining unit in an application for certification under the construction industry sections of the Act whether at or away from the job site? This question was to some extent answered in the Board's decision in Cedarhurst Paving Co. Limited, O.L.R.B. Monthly Reports, December 1964, p. 442. However, in the present case, we do not find it necessary to decide the question raised because, even assuming an affirmative answer to the Question, the Board is not

PREPARED IN THIS CASE TO INCLUDE THE EMPLOYEES WHILE WORKING IN KIRKLAND LAKE, AS THIS IS AN AREA SEPARATE AND DISTINCT FROM REGULAR AREA #16. WE EMPHASIZE HOWEVER THAT WE ARE NOT DECIDING THE QUESTION RAISED EITHER FOR OR AGAINST THE APPLICANT WHEN THE SHOP AND THE JOB SITE ARE IN THE SAME APPROPRIATE GEOGRAPHIC AREA."

10631-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. LAWSON-MCMULLEN-VICTORIA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FOUNDRY IN OTTAWA, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS AND AGREEMENT OF THE PARTIES).

10636-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. KALADAR PLANING MILLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TWEED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

10641-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Burch Construction Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(In the circumstances of this case, the Board sees no reason to depart from its established area, namely, the District of Thunder Bay.)

10642-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 1089 (Applicant) v. Dewcon Structures Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10643-65-R: International Hod Carriers Building & Common Labourers Union of America, Local #1089 (Applicant) v. Mannix Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN." (5 EMPLOYEES IN THE UNIT).

 $\frac{10649-65-R}{93}$ : United Brotherhood of Carpenters & Joiners of America Local Union  $\frac{1}{93}$  (Applicant) v. Mithon Construction Company Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS" APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10654-65-R: United Brotherhood of Carpenters & Joiners of America Local Union #397 (Applicant) v. Inspiration Limited, Contractors (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10655-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. E. A. Crain Construction Ltd. (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10658-65-R: International Association of Bridge Structural and Ornamental Tronworkers, Local 721 (Applicant) v. Dominion Fence & Wire Products Limited (Respondent).

Unit: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10661-65-R: United Brotherhood of Carpenters & Joiners of America, Local 1669 (Applicant) v. Babcock-Wilcox and Goldie-McCulloch Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT SMOOTH ROCK FALLS IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(IN THE CIRCUMSTANCES OF THE PRESENT CASE).

10667-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Limestone Quarries Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE N.RTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, WORKING OUTSIDE OF THE QUARRIES ON CONSTRUCTION WORK AND ENGAGED IN THE OPERATION

OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

10672-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, Local 597 (APPLICANT) v. INSPIRATION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10223-65-R: United Steelworkers of America (Applicant) v. Rheem Canada Limited (Respondent) v. Rheem Employees Association (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSON ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (112 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST			107
NUMBER OF BALLOTS CAST		107	
BALLOTS SEGREGATED AND			
NOT COUNTED	2		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF APPLICANT	57		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF INTERVENER	48		

(SEE INDEXED ENDORSEMENT PAGE 284 ).

### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10268-65-R: United Cement, Lime and Gypsum Workers International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. United Haulage and G V Trucking (Respondent) v. Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Intervener).

- AND -

10278-65-R: TEAMSTERS! LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. UNITED HAULAGE AND

G V TRUCKING (RESPONDENT).

#### THE ABOVE MATTERS ARE CONSOLIDATED.

Unit: "ALL EMPLOYEES OF UNITED HAULAGE AND G V TRUCKING WORKING IN AND OUT OF VAUGHAN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST		12
NUMBER OF BALLOTS CAST	11	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED IN		
FAVOUR OF INTERVENER	8	

10388-65-R: Local Union 1963, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Kinsella Contract Interiors Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTER'S APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD RUNNING EAST AND WEST NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

Number of names on revised voters! List			9
NUMBER OF BALLOTS CAST		8	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF APPLICANT	6		
NUMBER OF BALLOTS MARKED			
AGAINST APPLICANT	1		

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The problem respecting membership in another local and referred to in The Swansea Construction Company Limited case, Board file number 10079-64-R, has arisen in this case. The Board put the matter on for hearing and has had the advantage of Listening to the oral representations of the parties. In the particular circumstances of this case, we have decided not to depart from the Board's past policy at this time. However, the Board intends to keep the problem under review in future cases."

### APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

#### NO VOTE CONDUCTED

9353-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Milton Bus & Body Company Limited (Respondent) v. Milton Bus & Body Employees' Association (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE TO WITHDRAW

HAVING REGARD TO THE FACT THAT THE APPLICANT'S REQUEST WAS MADE FOLLOWING SEVERAL HEARINGS IN THIS MATTER THE BOARD, FOLLOWING ITS USUAL PRACTICE, DISMISSES THE APPLICATION."

(WRITTEN REASONS).

9898-64-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. (APPLICANT) v. NICK GIAMBERARDINO AND BROTHERS LIMITED (RESPONDENT) v. INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS', UNION, LOCAL 527 (AFL-CIO) (CLC) (INTERVENER).

In this case both the applicant and the intervener sought certification as bargaining agent for the employees affected. The applicant's application was dismissed for lack of satisfactory membership evidence. The intervener's application was also dismissed after a post-hearing vote (see page 267 of this Report).

10252-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. McNamara Construction of Ontario Limited (Respondent). (20 employees

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS NOTIFIED THE BOARD THAT A COLLECTIVE AGREEMENT HAS BEEN REACHED AND HAS FILED A COPY OF SAME WITH THE BOARD.

IN THESE CIRCUMSTANCES, THERE IS NO NEED TO PROCESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

10379-65-R: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Applicant) v. Vail's Fabric Care Ltd. (Respondent). (119 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN ITS ENDORSEMENT DATED JUNE 4TH, 1965, THE BOARD APPOINTED MR. A. A. MORROW, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT. FOLLOW-ING THE APPOINTMENT OF THE EXAMINER AND AFTER A MEETING HAD BEEN CONVENED BY HIM, BUT BEFORE ANY FURTHER PROCEEDINGS WERE TAKEN, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. THE RESPONDENT OBJECTED TO THE GRANTING OF SUCH LEAVE AND HAS REQUESTED EITHER THAT LEAVE TO WITHDRAW BE GRANTED ONLY ON THE APPLICANT'S UNDERTAKING NOT TO MAKE A FURTHER APPLICATION WITH RESPECT TO THE EMPLOYEES INVOLVED FOR A PERIOD OF ONE YEAR OR THAT A REPRESENTATION VOTE BE HELD.

IT IS CLEAR THAT THE CIRCUMSTANCES ARE NOT SUCH AS TO IMPOSE A BAR ON FURTHER APPLICATIONS BY THE APPLICANT OR TO REQUIRE

SUCH AN UNDERTAKING OF THE APPLICANT; NOR ARE THESE CIRCUMSTANCES IN WHICH A REPRESENTATION VOTE WOULD BE ORDERED.

The respondent requested a hearing in order to make representations on these matters to the Board, but the Board is of opinion that in view of the withdrawal of the applicant no hearing is necessary. The respondent is in no way prejudiced in these circumstances since it may make representations respecting the timeliness or propriety of any future applications at the hearing of such applications. Reference may be made to the kitchen installations Limited Case, Board File No. 4533-62-R, which is reported in 1963 C.C.H. Canadian Labour Law Reports at p. 1144.

HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW ITS APPLICATION WAS MADE, THE BOARD IS OF OPINION THAT THE REQUEST SHOULD NOT BE GRANTED AND THAT THE APPLICATION SHOULD BE DISMISSED.

THE APPLICATION IS ACCORDINGLY DISMISSED WITHOUT PREJUDICE TO THE RIGHT OF THE RESPONDENT TO MAKE REPRESENTATIONS AS TO THE EFFECT OF SUCH DISMISSAL IN ANY FUTURE APPLICATIONS BY THE APPLICANT WITH RESPECT TO THE EMPLOYEES HERE CONCERNED."

10448-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pillar Construction Limited (Respondent) v. Pillar Construction Limited Employees Association (Intervener). (16 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA IS SEEKING AN ALL-EMPLOYEE UNIT.
THE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION INCLUDED CARPENTERS AND LABOURERS. THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IS FOR BOTH CARPENTERS AND LABOURERS. THAT EVIDENCE IS EVIDENCE OF MEMBERSHIP IN LOCAL UNION 2466, A LOCAL OF THE APPLICANT.

WHILE ORDINARILY THIS WOULD NOT EFFECT AN APPLICATION MADE IN THE NAME OF THE PARENT TRADE UNION, IN THIS CASE THE REPRESENTATIVE OF THE APPLICANT MADE IT CLEAR TO THE BOARD THAT A CRAFT LOCAL WOULD NOT TAKE INTO MEMBERSHIP PERSONS WHO WERE NOT CARPENTERS. IN THESE CIRCUMSTANCES THE BOARD IS UNABLE TO ACCEPT THE EVIDENCE OF MEMBERSHIP FOR THE LABOURERS. WITHOUT THIS EVIDENCE THE APPLICANT HAS LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT AS MEMBERS.

THE APPLICATION MUST THEREFORE BE DISMISSED."

10467-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 493 (APPLICANT) v. McNamara Construction of Ontario Limited (Respondent) (27 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS INFORMED THE BOARD THAT IT HAS SIGNED AN AGREEMENT WITH THE RESPONDENT. IN THESE CIRCUMSTANCES THERE IS NO NEED TO PROCESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

10552-65-R: United Electrical, Radio and Machine Workers of America (UE) (APPLICANT) v. KINGSTON DUNBRIK (1963) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"No one appearing for the applicant and no one appearing for the respondent.

IN VIEW OF THE NON-APPEARANCE OF THE APPLICANT AT THE HEARING, THIS APPLICATION IS DISMISSED."

10579-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687, SUDBURY, ONTARIO (APPLICANT) v. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT) v. SUDBURY MINE MILL AND SMELTER WORKERS UNION, LOCAL 598, AFFILIATED WITH THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (INTERVENER) v. UNITED STEELWORKERS OF AMERICA (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification. The applicant seeks a unit composed of electricians and apprentices. The applicant claims that such a unit is to be deemed appropriate by virtue of the provisions of section 6 (2) of the Labour Relations Act, or in the alternative that the Board should, pursuant to section 6 (1) of the Act, find such a unit to be appropriate.

WHERE AN APPLICATION COMES WITHIN THE PROVISIONS OF SECTION 6 (2) OF THE ACT, THAT IS, WHERE AN APPLICATION IS BROUGHT WITH RESPECT TO (1) A GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES, AND (2) WHO COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES, AND WHERE (3) THE APPLICATION IS MADE BY A TRADE UNION THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD IS REQUIRED TO FIND THAT THE CRAFT UNIT IS APPROPRIATE. THE CONCLUDING WORDS OF SUBSECTION 2, HOWEVER, CONTAIN THE PROVISO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY THE SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE. IN THE INSTANT CASE IT IS NOT DENIED THAT CONDITIONS (1) AND (3) OF SUBSECTION 2 HAVE BEEN SATISFIED. MUCH OF THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING OF THIS MATTER WAS DIRECTED TO THE QUESTION WHETHER THE GROUP OF EMPLOYEES HERE CONCERNED COMMONLY BARGAIN SEPARATELY

AND APART FROM OTHER EMPLOYEES. IN VIEW OF THE DISPOSITION OF THIS CASE MADE ON OTHER GROUNDS, THE BOARD MAKES NO FINDING WITH RESPECT TO THIS ISSUE.

THE GROUP OF EMPLOYEES AFFECTED BY THE INSTANT APPLICATION ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE FIRST INTERVENER SO THAT BY THE PROVISO TO SUBSECTION 2 OF SECTION 6 THE BOARD WOULD NOT BE REQUIRED TO DEEM THEM TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING, EVEN IF CONDITIONS (1), (2) AND (3) ABOVE WERE SATISFIED.

THE RESPONDENT, THE FIRST INTERVENER AND THE SECOND INTERVENER SUBMITTED THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE BY REASON OF THE BARGAINING HISTORY OF THE RESPONDENT'S OPERATIONS. THE FIRST INTERVENER WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT IN 1944. AND THERE HAVE BEEN COLLECTIVE AGREEMENTS IN EFFECT BETWEEN THE RESPONDENT AND THE FIRST INTERVENER SINCE 1945. THE ELECTRICIANS HAVE BEEN INCLUDED IN THE BARGAINING UNIT THROUGHOUT THIS PERIOD AND THEIR INTERESTS HAVE BEEN REPRESENTED IN COLLECTIVE BARGAINING. WAGE RATES ARE PROVIDED FOR THEM AND THERE ARE SPECIAL PROVISIONS IN THE COLLECTIVE AGREEMENT CONCERN-ING "TRADES" GROUPS BY WHICH THE ELECTRICIANS, AMONG OTHERS, BENEFIT. THEY HAVE MADE USE OF THE GRIEVANCE PROCEDURE, THEY HAVE STEWARD REPRESENTATION AND AT THE MOST RECENT NEGOTIATIONS AN ELECTRICIAN WAS CHAIRMAN OF THE EMPLOYEES NEGOTIATING COMMITTEE. THE EVIDENCE ESTABLISHES THAT OVER A PERIOD OF MANY YEARS THE INTERVENER HAS EFFECTIVELY REPRESENTED THE ELECTRICIANS IN THE EMPLOY OF THE RESPONDENT.

HAVING IN MIND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE FIRST INTERVENER, THE BOARD IS OF THE OPINION THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. THE APPLICATION IS ACCORDINGLY DISMISSED."

10587-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE UNIVERSITY OF WATERLOO (RESPONDENT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES (FORMERLY NATIONAL UNION OF PUBLIC EMPLOYEES) (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification. The applicant applies, pursuant to the provisions of section 6(2) of the Act, for a bargaining unit consisting of stationary engineers and their helpers.

By the provisions of section 6 subsection 2 of the Act, where an application is made with respect to a group of employees who exercise technical skills or are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that,

ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD SHALL DEEM SUCH A GROUP OF EMPLOYEES TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OF CRAFT. THE CONCLUDING WORDS OF SUBSECTION 2, HOWEVER, CONTAIN THE PROVISO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY SUBSECTION 2 WHERE A GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION ARE IN FACT REPRESENTED BY THE INTERVENER AND WERE SO REPRESENTED AT THE TIME THIS APPLICATION WAS MADE. THESE EMPLOYEES ARE COVERED BY THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THE INTERVENER WAS CERTIFIED ON FEBRUARY 2ND, 1960, AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES INCLUDING THOSE AFFECTED BY THE PRESENT APPLICATION AND SINCE THAT TIME THE INTERVENER AND THE RESPONDENT HAVE ENTERED INTO FOUR COLLECTIVE AGREEMENTS. THE INTERVENER HAS NEGOTIATED WITH RESPECT TO THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION AND SUCH EMPLOYEES HAVE PARTICIPATED IN THE RATIFICATION OF COLLECTIVE AGREEMENTS AND HAVE HELD OFFICE IN THE INTERVENER'S ORGANIZATION. THERE IS NO EVIDENCE THAT THE INTERVENER HAS FAILED TO REPRESENT THE STATIONARY ENGINEERS EFFECTIVELY; INDEED, THE EVIDENCE IS TO THE CONTRARY.

HAVING IN MIND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER, THE BOARD IS OF THE OPINION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THIS CASE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

10594-65-R: Wood WIRE METAL LATHERS INTERNATIONAL UNION LOCAL 97 (APPLICANT) v. Modern Ceilings (Respondent). (3 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT ON BEHALF OF THREE EMPLOYEES CONSISTED OF ONE APPLICATION FOR MEMBERSHIP ACCOMPANIED BY A RECEIPT, A DUES BOOK WHICH WAS NOT SIGNED BY THE EMPLOYEE IN RESPECT OF WHOM IT WAS SUBMITTED AND AN OFFICIAL RECEIPT (NOT ACCOMPANIED BY AN APPLICATION CARD) SIGNED BY THE PERSON COLLECTING THE MONEY AND BEARING THE COUNTERSIGNATURE OF THE PERSON FROM WHOM THE MONEY WAS COLLECTED.

WITH RESPECT OF THE UNSIGNED DUES BOOK, SUBSECTION 1 OF SECTION 50 OF THE BOARD'S RULES OF PROCEDURE PROVIDES IN PART THAT EVIDENCE OF MEMBERSHIP SHALL NOT BE ACCEPTED BY THE BOARD UNLESS THE EVIDENCE IS SIGNED BY THE EMPLOYEE (AND SEE PAGE MANUFACTURING COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, MARCH 1963, PAGE 517;

NICK BABIJ, O.L.R.B. MONTHLY REPORT, JUNE 1961, PAGE 75 AND THE MOOSE HEAD HOUSE (HAMILTON) CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1961, PAGE 278).

WITH RESPECT TO THE OFFICIAL RECEIPT SIGNED BY THE PERSON COLLECTING THE MONEY AND BEARING THE COUNTERSIGNATURE OF THE PERSON FROM WHOM THE MONEY WAS COLLECTED THE ATTENTION OF THE PARTIES IS DRAWN TO THE MCNAMARA CONSTRUCTION OF ONTARIO LTD. CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1963, PAGE 309; THE EASTERN ONTARIO TILE & TERRAZZO COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1963, PAGE 516 AND THE MATTHEWS CONSTRUCTION COMPANY LIMITED CASE, (1955) C.L.S. 76-479 WHERE THE BOARD HELD THAT SUCH EVIDENCE, ALONE, DID NOT MEET THE BOARD STANDARDS REQUIRED IN THESE MATTERS.

IN THESE CIRCUMSTANCES THE BOARD FINDS THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

#### CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

10191-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. The Wallace Barnes Company Limited (Respondent) v. Canadian Springmakers! Union No. 175, N.C.C.L. (Intervener).

VOTING CONSTITUENCY: "ALL HOURLY RATED EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT HAMILTON AND BURLINGTON, SAVE AND EXCEPT FOREMEN, ASSISTANT FOREMEN, OFFICE STAFF, TECHNICAL STAFF, OFFICE JANITORS, TRUCK DRIVERS, WATCHMEN, APPRENTICES AND PERSONS ABOVE THE RANK OF FOREMAN."

Number of names on revised voters! List Number of ballots cast

249

(BALLOTS NOT COUNTED)

(SEE INDEXED ENDORSEMENT PAGE 282 ).

10282-65-R: Wood, Wire and Metal Lathers International Union, Local 97 (Applicant) v. Borys Kowal carrying on business under the firm name and style of Beko Lathing Company (Respondent).

UNIT: "ALL LATHERS AND LATHERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE

SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS! LIST			6
NUMBER OF BALLOTS CAST		6	
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF APPLICANT .	3		
NUMBER OF BALLOTS MARKED			
AGAINST APPLICANT	3		

10496-65-R: United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO-CAPPLICANT) v. Federal Mogul-Bower (Canada) Limited (Respondent) v. Canadian Rubbe Workers' Union No. 154, N.C.C.L. (Intervener).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT OFFICE EMPLOYEES, PLANT GUARDS, SALARIED EMPLOYEES, FOREMEN AND WORKING FOREMEN, ANY EMPLOYEES WHO HAVE POWER TO DISCIPLINE EMPLOYEES ON BEHALF OF THE RESPONDENT, PART TIME EMPLOYEES OR EMPLOYEES OUTSIDE PLANT #1 AT 1030 ERIE STREET AND PLANT #2 AT 342 ERIE STREET, STRATFORD."

NUMBER OF NAME:	S ON REVISED VOTERS!	LIST	249
NUMBER OF BALL	OTS CAST		234
NUMBER OF SPOIL	ED BALLOTS	1	
NUMBER OF BALL	OTS MARKED IN		
FAVOUR OF APPI	LICANT	85	
NUMBER OF BALL	TS MARKED IN		
FAVOUR OF INTE	RVENER	148	

## CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

9878-64-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (APPLICANT) v. NICK GIAMBERARDINO AND BROTHERS LIMITED (RESPONDENT) v. INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION, LOCAL 527 (AFL-CIO) (CLC) (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The intervener, international Hod Carriers!, Building and Common Labourers! Union, Local 527 (AFL-C10) (CLC), alleged that the applicant trade union should not be certified on the ground that the application was supported and assisted by the respondent. In this connection, the Board Heard a good deal of evidence followed in due course by lengthy argument on behalf of the intervener and the applicant. We do not intend to review the evidence in detail

EXCEPT IN SO FAR AS IT MAY BE NECESSARY TO DEAL WITH CERTAIN ARGUMENTS ADVANCED BY COUNSEL.

IN THE FIRST PLACE, WE CANNOT AGREE WITH COUNSEL FOR THE INTERVENER THAT RICUITTI DID NOT UNDERSTAND WHAT HE WAS SIGNING. WHILE HE CANNOT READ ENGLISH, THE EVIDENCE SHOWS THAT HE LEARNED FROM OTHER EMPLOYEES WHAT IT WAS ABOUT. NOR CAN WE FIND THAT HE SIGNED THE UNION CARD IN ORDER TO WORK. HE "BELIEVED IT WAS SOMETHING THAT WAS GOOD AND RIGHT". AGAIN, THE EVIDENCE REVEALS THAT HE DID KNOW WHAT UNION HE HAD SIGNED FOR. HIS EVIDENCE WAS THAT HE WAS TOLD THE NAME OF THE UNION BUT HE COULDN'T NOW REMEMBER IT. THE SAME IS TRUE WITH RESPECT TO DE MARINIS. THE EVIDENCE IS CLEAR THAT HE WAS TOLD THE NAME OF THE UNION WHICH HE HAD JOINED BUT THAT HE COULDN'T NOW REMEMBER IT. THERE IS NO EVIDENCE TO SUGGEST THAT HE DID NOT UNDERSTAND WHAT HE WAS SIGNING.

We must also reject the argument that no weight should be accorded the applicant's membership evidence because it was obtained by Santurbano. Such authority as this employee may exercise is no more than that ordinarily exercised by a working foreman in the construction industry and the Board does not regard such persons in the normal course of events as exercising managerial functions within the meaning of section 1(3)(8) of the Labour Relations Act.

THERE REMAINS FOR CONSIDERATION THE ALLEGATION OF EMPLOYER SUPPORT AND ASSISTANCE. AFTER VERY CAREFULLY CONSIDERING THE EVIDENCE WHICH WE STRESS WAS NOT CONTRADICTED OR CHALLENGED BY THE APPLICANT OR BY THE RESPONDENT, AND KEEPING IN MIND THAT PRIOR INCONSISTENT STATEMENTS ARE NOT ADMISSIBLE TO PROVE THE TRUTH THEREOF, WE MAKE THE FOLLOWING FINDINGS OF FACT: NICK GIAMBERARDINO, THE EMPLOYER, TALKED TO ONE SALVATORE D'ANGELO, AN EMPLOYEE, ABOUT "THE UNION". HE STATED THAT: "WE JUST WANT TO PUT THEM IN". SANTURBANO HEARD THIS CONVERSATION AND LATER THE SAME DAY GIAMBERARDINO AGAIN SPOKE TO D'ANGELO AND SAID: "WE DON'T NEED YOU NOW. WE HAVE ENOUGH." IN OUR VIEW, THE EVIDENCE WOULD SUPPORT AN INFERENCE THAT THE UNION REFERRED TO BY GIAMBERARDINO WAS THE APPLICANT TRADE UNION.

IT WAS CLEAR FROM THE EVIDENCE OF RICUITTI THAT NICK GIAMBERARDINO SPOKE TO THE EMPLOYEES ONE DAY BEFORE THEY WENT INTO WORK AND TOLD THEM THAT THE UNION WAS A GOOD UNION FOR THE WORKERS. FOLLOWING THIS AND ON THE SAME DAY THE APPLICANT'S MEMBERSHIP CARDS WERE DISTRIBUTED FOR SIGNING AMONG THE EMPLOYEES. RICUITTI TESTIFIED THAT NICK GIAMBERARDINO WHILE NOT NEAR HIM WHEN HE SIGNED WAS IN THE SAME APARTMENT. IT IS ALSO A FAIR INFERENCE FROM THE EVIDENCE THAT NICK GIAMBERARDINO WAS PRESENT OR IN THE IMMEDIATE NEIGHBORHOOD OF OTHER WORKERS WHEN THEY SIGNED THE CARDS AND THAT HE KNEW WHAT WAS GOING ON AND THAT THE EMPLOYEES KNEW THAT HE KNEW. IN THIS CONNECTION, HIS LATER REMARKS TO D'ANGELO TO THE EFFECT THAT, "WE DON'T NEED YOU NOW. WE HAVE ENOUGH." ARE SIGNIFICANT.

THERE IS ALSO SOME EVIDENCE TO SUPPORT THE ARGUMENT OF COUNSEL FOR THE INTERVENER THAT THE EMPLOYEES WHO TESTIFIED WOULD HAVE

BEEN PECULIARLY SUSCEPTIBLE TO EMPLOYER INFLUENCE AND, FURTHER, THAT THEY LOOKED TO NICK GIAMBERARDING FOR ASSISTANCE AND GUIDANCE. THIS EVIDENCE INCLUDES THE FACT THAT SOME OF THEM CAME FROM THE SAME VILLAGE IN ITALY AS GIAMBERARDING AND THE FACT THAT, ALTHOUGH ALL THE WITNESSES WERE SUMMONED BY THE INTERVENER AND PAID CONDUCT MONEY, EACH CALLED NICK GIAMBERARDING AND ARRANGED TO COME DOWN TO THE HEARING IN TORONTO WITH HIM IN HIS CAR.

AFTER CAREFUL CONSIDERATION OF THE FACTS AS FOUND ABOVE AND THE REPRESENTATIONS OF THE PARTIES, INCLUDING THE CASES REFERRED TO BY THE COUNSEL FOR THE INTERVENER, NAMELY, THE AIR LIQUIDE CASE, 0.L.R.B. MONTHLY REPORTS, JANUARY, 1964, p. 558, AND THE PEEL BLOCK COMPANY LTD. CASE, (1963) 63 C.L.L.C. \$116,277, WE ARE UNABLE TO ACCORD ANY WEIGHT TO THE MEMBERSHIP EVIDENCE FILED ON BEHALF OF THE APPLICANT. THE APPLICANT'S APPLICATION MUST THEREFORE BE AND IS ACCORDINGLY DISMISSED.

We are Left, Therefore, with the application for Certification by the intervener.

THE INTERVENER CHALLENGED THE LIST OF LABOURERS FILED BY THE RESPONDENT AND IN PARTICULAR ALLEGED THAT P. BUCCIONE AND G. FRISICCHIO WERE PLASTERERS RATHER THAN LABOURERS. ON THE BASIS OF THE EVIDENCE BEFORE US AND AFTER CONSIDERING THE ARGUMENTS MADE WITH RESPECT TO THIS EVIDENCE, WE ARE UNABLE TO FIND THAT THE TWO EMPLOYEES IN QUESTION WERE PLASTERERS AT ANY TIME MATERIAL TO THIS APPLICATION.

THE BOARD FURTHER FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION BY THE APPLICANT, NAMELY JANUARY 18, 1965, THERE WERE FOUR LABOURERS OF THE RESPONDENT AT WORK IN THE GEO-GRAPHIC AREA DESCRIBED ABOVE, THE FOUR BEING S. D'ANGELO, P. BUCCIONE, N. DE MARINIS AND N. D'ANGELO. ON JANUARY 26, 1965, THE DATE OF THE FILING OF THE INTERVENER'S APPLICATION FOR CER-TIFICATION, THERE WERE ALSO FOUR LABOURERS OF THE RESPONDENT AT WORK IN THE SAID AREA, THESE FOUR BEING S. D'ANGELO, P. BUCCIONE, N. DE MARINIS AND N. D'ANGELO. THE MEMBERSHIP POSITION OF THE INTERVENER IS THE SAME REGARDLESS OF WHICH DATE IS TAKEN AND IT IS THEREFORE UNNECESSARY FOR THE BOARD TO CONSIDER WHICH OF THE TWO DATES APPLIES IN THE CIRCUMSTANCES OF THE PRESENT CASE. IT IS ALSO CLEAR THAT THE INTERVENER IS NOT ENTITLED TO INVOKE THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT BECAUSE IT DOES NOT HAVE MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS."

THE BOARD SUBSEQUENTLY CONDUCTED A VOTE TO DETERMINE WHETHER OR NOT THE RESPONDENT'S EMPLOYEES WISHED TO BARGAIN COLLECTIVELY THROUGH THE INTERVENER. THE RESULT OF THE VOTE IS AS FOLLOWS:-

Number of names on revised voters list Number of ballots cast Number of spoiled ballots Number of ballots marked in Favour of intervener

7

8

NUMBER OF BALLOTS MARKED
AGAINST INTERVENER

5

10302-65-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Redfern Construction Co. Ltd. (Respondent).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST	2
NUMBER OF BALLOTS CAST	2
NUMBER OF BALLOTS MARKED IN	
FAVOUR OF APPLICANT 0	
NUMBER OF BALLOTS MARKED	
AGAINST APPLICANT 2	

10318-65-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION LOCAL 220, B.S.E.I.U., A.F.L. - C.I.O. - C.L.C. (Applicant) v. The Board of Education FOR THE CITY OF WOODSTOCK (RESPONDENT) v. WOODSTOCK CUSTODIAN'S ASSOCIATION (INTERVENER).

Unit: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT TEACHERS, OFFICE STAFF, CHIEF ENGINEER AND PART-TIME CLEANING HELP." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

IN THIS CASE BOTH THE APPLICANT AND THE INTERVENER SOUGHT CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES AFFECTED. THE INTERVENER SUBSEQUENTLY REQUESTED LEAVE TO WITHDRAW ITS APPLICATION, WHICH REQUEST WAS GRANTED BY THE BOARD.

A REPRESENTATION VOTE WAS CONDUCTED BY THE BOARD TO DETERMINE WHETHER OR NOT THE EMPLOYEES WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT. THE RESULT OF THE VOTE IS AS FOLLOWS:-

35

Number of names on revised voters' List

Number of Ballots Cast

Number of Ballots Marked in Favour of London

and District Building Service Workers Union

Local 220, B.S.E.I.U., A.F.L.-C.I.O.-C.L.C. 7

Number of Ballots Marked Against London and

District Building Service Workers Union

Local 220, B.S.E.I.U., A.F.L.-C.I.O.-C.L.C. 28

10347-65-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Bertrand & Frere Construction Co. Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF L'ORIGNAL AND OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS¹ LIST

NUMBER OF BALLOTS CAST

NUMBER OF BALLOTS MARKED IN

FAVOUR OF APPLICANT

NUMBER OF BALLOTS MARKED

AGAINST APPLICANT

58

(SEE INDEXED ENDORSEMENT PAGE 292 ).

10377-65-R: International Association of Machinists (Applicant) v. Truck & Tractor Equipment Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE VILLAGE OF DIXIE IN THE COUNTY OF PEEL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names on revised voters† List 13

Number of ballots cast 13

Number of ballots marked in FAVOUR of applicant 2

Number of ballots marked against applicant 11

### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

10132-64-R: Wood, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (APPLICANT) v. BALLANTYNE LATHING LTD. (RESPONDENT).

10329-65-R: Woodstock Custodians' Association (Applicant) v. The Board of Education of the City of Woodstock (Respondent). (35 employees).

10476-65-R: Upholsterers' International Union of N.A. (Applicant) v. Avondale Furniture Company Division of Allan Bedding Company Limited (Respondent) (26 employees).

10585-65-R: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Scan Electric (Respondent). (5 employees).

10632-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.) (Applicant) v. Budd Metal Treating (Respondent). (23 employees).

10639-65-R: General Truck Drivers Union, Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. International Wire & Cable Company Limited Carrying on Business as Lanark Manufacturing Company (Respondent). (530 employees).

10647-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. INTERNATIONAL WIRE AND CABLE COMPANY LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF LANARK MANUFACTURING COMPANY (RESPONDENT). (550 EMPLOYEES).

10663-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, Local 749 (Applicant) v. Gro-Gold Fertilizer Co. (Respondent). (7 employees).

10666-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Peacock Contracting Limited (Respondent). (18 employees).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

#### DURING JULY

10409-65-U: Donald Demars and Others (Applicants) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Respondent) v. Rockwell-Standard Corporation of Canada Limited (Intervener) (GRANTED) (11 employees).

(Re: ROCKWELL-STANDARD CORPORATION OF CANADA LIMITED TILBURY, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS' LIST

NUMBER OF BALLOTS CAST

NUMBER OF BALLOTS MARKED IN
FAVOUR OF RESPONDENT

O

NUMBER OF BALLOTS MARKED

AGAINST RESPONDENT

11

10426-65-R: DONALD COX (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (RESPONDENT) (GRANTED) (550 EMPLOYEES).

(Re: Lanark Manufacturing Company, Dunnville, Ontario).

NUMBER OF NAMES ON REVISED VOTERS' LIST 401
NUMBER OF BALLOTS CAST 378
NUMBER OF BALLOTS SPOILED 8
NUMBER OF BALLOTS MARKED IN
FAVOUR OF RESPONDENT 78
NUMBER OF BALLOTS MARKED
AGAINST RESPONDENT 292

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration terminating the bargaining rights of the respondent pursuant to the provisions of section 43 of The Labour Relations Act.

THE APPLICANT IS AN EMPLOYEE OF INTERNATIONAL WIRE & CABLE COMPANY LIMITED, CARRYING ON BUSINESS AS LANARK MANUFACTURING COMPANY AND IS INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT.

THE APPLICANT TESTIFIED THAT HE WAS THE PRESIDENT OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE #1075, WHICH UNION WAS FORMERLY THE BARGAINING AGENT FOR THE UNIT OF EMPLOYEES CURRENTLY REPRESENTED BY THE RESPONDENT AND THAT THE RESPONDENT HAD DISPLACED THE INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE # 1075, AS BARGAINING AGENT ON THE 21ST DAY OF APRIL, 1964.

The petitions which were filed in support of this application were prepared and typed in the office of the International Association of Machinists, Lodge #2075, at Dunnville.

THE APPLICANT CALLED WITNESSES TO TESTIFY CONCERNING THE CIRCULATION OF THE PETITIONS FILED IN SUPPORT OF THIS APPLICATION, AND THERE WAS NO INDICATION OR SUGGESTION THAT INTERNATIONAL WIRE & CABLE COMPANY LIMITED, CARRYING ON BUSINESS AS LANARK MANUFACTURING COMPANY TOOK ANY PART IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE DOCUMENTS FILED IN SUPPORT OF THIS APPLICATION.

IN VIEW OF THE CIRCUMSTANCES WHICH LED UP TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS SUBMITTED TO THE BOARD IN SUPPORT OF THIS APPLICATION FOR TERMINATION, WE ARE SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF INTERNATIONAL WIRE & CABLE COMPANY LIMITED, CARRYING ON BUSINESS AS LANARK MANUFACTURING COMPANY, IN THE BARGAINING UNIT, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

THERE WAS NO EVIDENCE ADDUCED AT THE HEARING WITH RESPECT TO THE ORIGINATION OF THE EVIDENCE FILED BY THE APPLICANT AND IN ACCORDANCE WITH THE BOARD S PRACTICE I WOULD DISMISSED THE APPLICATION."

10588-65-R: Donald Oliver (Applicant) v. Local 738, THE UNITED RUBBER, CORK LINGLEUM AND PLASTICS UNION (RESPONDENT) v. Kayson Plastic and Chemicals Limited (Intervener). (GRANTED) (78 employees).

(Re: Kayson Plastic and Chemicals Limited, Preston, Ontario).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE

BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION. AT THE HEARING IN THIS MATTER COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT THE RESPONDENT NO LONGER CLAIMS TO REPRESENT THE EMPLOYEES OF THE INTERVENER. THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF THE INTERVENER, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

#### APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JULY

10501-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE CITY OF GUELPH, ONTARIO (RESPONDENT). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant is applying to the Board pursuant to section 47 of The Labour Relations Act for a declaration that it has acquired the rights, privileges and duties of its predecessor, The Guelph City Hall Staff Association, by reason of a merger, amalgamation or a transfer of jurisdiction.

AT THE HEARING OF THIS APPLICATION ON JULY 13TH, 1965, BOTH THE APPLICANT AND THE RESPONDENT ALSO REQUESTED THAT THE BOARD MAKE A DETERMINATION AS TO WHETHER PERSONS EMPLOYED IN CERTAIN NAMED JOB CLASSIFICATIONS ARE COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT DATED JUNE 15TH, 1964 WHICH WAS ENTERED INTO BY THE RESPONDENT AND THE GUELPH CITY HALL STAFF ASSOCIATION.

IN OUR OPINION, THE REMEDY WHICH THE PARTIES ARE SEEKING, AS OUTLINED IN THE ABOVE PARAGRAPH, IS NOT AVAILABLE TO THEM IN AN APPLICATION MADE UNDER SECTION 47 OF THE LABOUR RELATIONS ACT.

ON THE EVIDENCE BEFORE US, THE BOARD FINDS THAT THE APPLICANT, BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION, HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE GUELPH CITY HALL STAFF ASSOCIATION WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE GUELPH CITY HALL STAFF ASSOCIATION EFFECTIVE FROM JANUARY 1, 1964 TO DECEMBER 31, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

AN AFFIRMATIVE DECLARATION UNDER SECTION 47(1) OF THE LABOUR RELATIONS ACT, TO THE EFFECT THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE GUELPH CITY HALL STAFF ASSOCIATION WHICH WAS A PARTY TO THE COLLECTIVE AGREEMENT REFERRED TO WITH THE RESPONDENT, WILL ISSUE."

# APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JULY

10311-65-U: BEATTY BROS., A DIVISION OF GENERAL STEEL WARES LIMITED (APPLICANT) V. JOHN STEWART MACKENZIE ET AL (RESPONDENTS). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR REASONS GIVEN IN WRITING THIS APPLICATION IS  $\mathsf{DISMISSED}_{\bullet}$  "

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"I DISSENT. FOR REASONS GIVEN IN WRITING I WOULD HAVE GRANTED THE STRIKE DECLARATION SOUGHT BY THE APPLICANT."

10528-65-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. LOCAL 598 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 294 ).

10549-65-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. CARPENTERS
DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS Nos. 27, 3233, 681, 3227
666, 1963, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT

(SEE INDEXED ENDORSEMENT PAGE 295).

10551-65-U: HEFFERNAN FLOOR & WALL PRODUCTS LIMITED (APPLICANT) V. VLADIMIR BUDIC ET AL (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration that a strike engaged in by the respondents is unlawful.

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE RESPONDENTS. VLADIMIR BUDIC, OSWALD KEUSCH, IVAN LES, STEPHANO MAGAGNA, KLEMENS PYSANCZYN, ANTON SKRLJ, VLADO SESELJA, NAZARIO TARABOCHIA, JOHN DECOSTA TOME AND CARLOS VENTURA ARE ALL EMPLOYEES OF THE APPLICANT AND HAVE SINCE ON OR ABOUT JUNE 11TH, 1965, IN COMBINATION OR IN CONCERT AND IN ACCORDANCE WITH A COMMON UNDERSTANDING REFUSED TO WORK AND HAVE CONTINUED TO REFUSE TO WORK WITH THE DESIGN TO RESTRICT OR LIMIT THE OUTPUT OF THE APPLICANT AT METROPOLITAN TORONTO, AND HAVE THEREBY ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1 (1) (1) OF THE LABOUR RELATIONS ACT.

THE BOARD FURTHER FINDS THAT THE STRIKE ENGAGED IN BY THE SAID RESPONDENTS OCCURRED DURING THE TERM OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA WHICH IS BINDING UPON THE RESPONDENTS.

BY WAY OF EXPLANATION FOR THEIR CONDUCT, THE

RESPONDENTS STATED THAT THEY WERE NOT IN FAVOUR OF ENGAGING IN A STRIKE AGAINST THEIR EMPLOYER DURING THE TERM OF THE COLLECTIVE AGREEMENT. HOWEVER, THEY ALLEGED THAT THEY WERE COMPELLED TO DO SO BY THEIR UNION WHICH THREATENED THEM WITH A FINE OF \$50.00 A DAY IF THEY REFUSED TO PARTICIPATE IN THE STRIKE. IF THIS ALLEGATION IS TRUE, WHILE THE BOARD WOULD BE SYMPATHETIC WITH THE RESPONDENTS IN SUCH CIRCUMSTANCES AND WHILE IT IS THE UNION WHO WOULD BE RESPONSIBLE FOR THEIR UNLAWFUL ACTIVITIES, SUCH FACTS WOULD NOT BE SUFFICIENT TO CAUSE THE BOARD TO EXERCISE ITS DISCRETION IN FAVOUR OF THE RESPONDENTS IN THIS MATTER AND WOULD NOT DISENTITLE THE APPLICANT TO THE RELIEF WHICH IT CLAIMS.

THE BOARD THEREFORE DECLARES, PURSUANT TO THE PROVISIONS OF SECTION 67 OF THE LABOUR RELATIONS ACT, THAT THE STRIKE ENGAGED IN BY THE SAID RESPONDENTS IS AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54 OF THE ACT."

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

10482-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. IRVING-CHARLES SUPERMARKETS LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 298 ).

10527-65-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. LOCAL 598 OF THE OPERATIVE PLASTERERS! AND CEMENT MASONS! INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENT). (WITHDRAWN).

10548-65-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. CARPENTERS
DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS NOS. 27, 3233, 681,
3227, 666, 1963, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(RESPONDENT). (WITHDRAWN).

10569-65-U: A. L. WATSON LIMITED AND A. L. WATSON (APPLICANTS) v. H. WHALEN ET AL (RESPONDENTS). (WITHDRAWN).

10582-65-U: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Harold Gross Limited (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JULY

9792-64-U: International Brotherhood of Teamsters Union, Local No. 879 (Complainant) v. Day and Campbell Limited (Respondent).

10328-65-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS, LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. CLEANO'L SERVICES LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTIONS 50, 52 AND 59 OF THE LABOUR RELATIONS ACT, IN THAT HE WAS DISCHARGED BY AN OFFICER OF THE RESPONDENT COMPANY ON OR ABOUT THE 21ST DAY OF APRIL, 1965, BECAUSE OF HIS UNION ACTIVITY.

HAVING CONSIDERED THE EVIDENCE AND ARGUMENTS PRESENTED AT THE HEARING OF THIS MATTER, THE BOARD FINDS THAT THE AGGRIEVED PERSON WAS NOT DISCHARGED FOR UNION ACTIVITY.

THE COMPLAINT ACCORDINGLY IS DISMISSED."

10370-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. IRVING-CHARLES SUPERMARKETS LIMITED (RESPONDENT).

10372-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. IRVING-CHARLES SUPERMARKETS LIMITED (RESPONDENT).

10413-65-U: Laundry, Dry Cleaning and Dye House Workers' International Union Local 351 (Complainant) v. Vail's Fabric Care Ltd. (Respondent).

10418-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. COOEY METAL PRODUCTS LIMITED (RESPONDENT).

10455-65-U: United Steelworkers of America (Complainant) v. S. A. Armstrong Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 302 ).

10540-65-U: International Woodworkers of America (Complainant) v. Pickering Sash and Manufacturing Ltd. (Respondent).

10581-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. ZEHR'S MARKETS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This a complaint for relief under section 65 of The Labour Relations Act.

HAVING REGARD TO ALL THE EVIDENCE ESPECIALLY THE CONFLICT BETWEEN THE EVIDENCE ADDUCED BY THE RESPONDENT WITH RESPECT TO ITS REASONS FOR THE DISMISSAL OF ELEANOR DYER AND THE REASONS GIVEN HER FOR HER DISMISSAL AT THE TIME SHE WAS DISMISSED, THE BOARD FINDS THE REAL REASON THAT ELEANOR DYER WAS DISCHARGED BY THE RESPONDENT ON JUNE 19TH, 1965, WAS CONTRARY TO THE PROVISIONS OF SECTION 50 (A) OF THE LABOUR RELATIONS ACT.

THE BOARD, HOWEVER, IS NOT SATISFIED THAT ELEANOR
DYER TOOK ALL STEPS AVAILABLE TO HER TO MITIGATE HER LOSS AFTER HER
DISCHARGE AND THE BOARD HAS TAKEN THIS FACT INTO CONSIDERATION IN

ASSESSING THE COMPENSATION DUE TO MRS. DYER.

#### THE BOARD DETERMINES:

- (A) THAT ELEANOR DYER SHALL BE REINSTATED FORTHWITH TO THE POSITION HELD BY HER AT THE TIME OF HER DISCHARGE, WITH COMPENSATION FOR LOSS OF EARNINGS,
- (B) THAT THE RESPONDENT PAY TO ELEANOR DYER THE SUM OF \$35.00 AS COMPENSATION FOR THE AMOUNT OF THE LOSS OF EARNINGS THAT SHE SUSTAINED BY REASON OF HER HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF HER DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER,
- (c) That the parties meet forthwith with a view to agreeing on the amount of the loss of earnings that Eleanor Dyer sustained by reason of her having been discharged contrary to the Act between the date of the hearing in this matter and the date of her reinstatement, and
- (D) THAT IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF, WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO ELEANOR DYER."

10583-65-U: Local 280 of the Hotel & Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. Harold Gross Limited (Respondent).

10592-65-U: International Union of Doll and Toy Workers of the United States and Canada (Complainant) v. Waterloo Stampings Limited (Respondent).

10620-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Perfection Automotive Products (Windsor) Ltd. (Respondent).

## REFERENCES TO BOARD PURSUANT TO SECTION 794 OF THE ACT DISPOSED OF DURING JULY

10220-65-M: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Trade Union) v. Dutch Boy Food Markets (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

THE TRADE UNION WAS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO KITCHENER FOOD MARKET LIMITED."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

" DISSENT.

FOR REASONS GIVEN IN WRITING | WOULD HAVE DISMISSED THE APPLICATION."

10221-65-M: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (TRADE UNION) v. DUTCH BOY FOOD MARKETS (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference from the Minister to the Board pursuant to section 79a of The Labour Relations Act. The question for determination by the Board is whether food Handlers Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Hereinafter referred to as the "trade union") was entitled to give notice of its desire to bargain to Kitchener Food Market Limited (Hereinafter referred to as "Kitchener Food") which carries on business under the name of Dutch Boy Food Markets, pursuant to section 47a of The Labour Relations Act.

FOR THE REASONS GIVEN BY THE BOARD IN THE DUTCH BOY FOOD MARKETS CASE BOARD FILE NO. 10220-65-M, THE BOARD FINDS THAT THE TRADE UNION IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF KITCHENER FOOD IN ITS RETAIL STORE AT HIGHLAND ROAD IN KITCHENER SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, OFFICE STAFF, STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFFSCHOOL HOURS AND DURING THE SCHOOL VACATION PERIODS.

THE TRADE UNION, ACCORDINGLY, WAS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN TO KITCHENER FOOD."

BOARD MEMBER M.C. HAY DISSENTED AND SAID:-

"I DISSENT. FOR THE REASONS GIVEN IN MY DECISION IN THE DUTCH BOY FOOD MARKETS CASE BOARD FILE No. 10220-65-M
I WOULD HAVE DISMISSED THE APPLICATION."

10300-65-M: The United Steelworkers of America (Trade Union) v. Grenville Aggregate Specialties Ltd. (Employer).

(SEE INDEXED ENDORSEMENT PAGE 304 ).

## REQUEST FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 47A

10163-64-M: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. GIBSCO TRANSPORT LTD. (RESPONDENT) v. GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (INTERVENER) v. JOHN GRANT HAULAGE LIMITED (INTERVENER).

THE BOARD FOUND THAT THE APPLICANT'S REQUEST DID NOT REFER TO ANY NEW EVIDENCE RELATING TO THE QUESTION IN ISSUE AT THE TIME OF THE HEARING OF THE CASE WHICH WOULD NOT HAVE BEEN AVAILABLE TO THE PARTIES AT THAT TIME.

IN THE BOARD'S OPINION, THE FINDINGS OF FACT WHICH IT MADE WERE SUPPORTED BY THE EVIDENCE HEARD. FULL OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT HEREON WAS GIVEN AT THE HEARING.

THE APPLICANT'S REQUEST FOR A REVIEW WAS THEREFORE DENIED.

## REQUEST FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79A

10367-65-M: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Trade Union) v. Dominion Building Materials Limited, Ottawa, Ontario (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The employer, by letter from its solicitors dated June 21st, 1965, has requested the Board to reconsider its decision dated June 17th, 1965, in this matter.

THE EMPLOYER HAS NOT ALLEGED THAT THERE IS NEW EVIDENCE NOW AVAILABLE THAT WAS NOT AVAILABLE AT THE HEARING IN THIS CASE.

ALL THE ISSUES AND ARGUMENTS RAISED BY THE EMPLOYER IN THE LETTER FROM ITS SOLICITORS DATED JUNE 21ST, 1965 WERE CONSIDERED BY THE BOARD PRIOR TO MAKING ITS DECISION DATED JUNE 17th, 1965.

THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED JUNE 17TH, 1965 AND ACCORDINGLY DENIES THE EMPLOYER'S REQUEST.

However, the Board amends the reference to "The Interpretations Act" in its decision dated June 17th, 1965, to read "The Interpretation Act R.S.O. 1960 ch. 191"."

## REQUEST FOR REOPENING OF APPLICATION FOR CERTIFICATION

10494-65-R: International Hod Carriers Building and Common Labourers Union, Local 607 (Applicant) v. Canadian Stebbins Engineering & Manufacturing Co. Ltd. (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Following the decision of the Board in this matter, dated June 16, 1965, in which the Board certified the applicant for construction Labourers of the respondent in the District of Thunder Bay, a handwritten Statement of Desire was received on June 18, 1965 by the Board signed by Stuart A. Broome and 26 other persons purporting to be employees of the respondent. The statement of desire was mailed ordinary mail (not registered) on June 17, 1965. The terminal date for the application, that is, the date on which such statements must be filed with the Board, was June 15, 1965. See section 77(2)(J) of the Labour Relations Act, section 50(1)(B) of the Board's Rules of Procedure and paragraphs 3, 4, 5 and 6 of Form 57, Notice to Employees of Application for Certification, Construction Industry. The Board, in accordance with its usual practice in such cases, returned the statement to Mr. Broome.

SUBSEQUENTLY, THE REGISTRAR RECEIVED AN AFFIDAVIT, SIGNED BY MR. BROOME, ALONG WITH A REQUEST THAT IT BE PLACED BEFORE THE BOARD FOR ITS CONSIDERATION AND DISPOSITION. MR. BROOME IS ASKING THE BOARD TO REOPEN THE CERTIFICATION PROCEEDINGS. IN DEALING WITH THIS REQUEST THE BOARD IS ASSUMING THAT ALL THE STATEMENTS IN THE AFFIDAVIT ARE TRUE IN ALL RESPECTS.

ON THAT ASSUMPTION, IT WOULD APPEAR THAT THE STATEMENT OF DESIRE WAS HANDED TO AN EMPLOYEE OF THE DEPARTMENT OF LABOUR IN PORT ARTHUR WHO UNDERTOOK TO FORWARD THE STATEMENT TO THE BOARD. THE DOCUMENT WAS DELIVERED TO THIS EMPLOYEE ON JUNE 11TH, AND WE ARE PREPARED TO ASSUME THAT IF HE HAD ACTED WITH DISPATCH, IT WOULD HAVE REACHED THE BOARD BY THE TERMINAL DATE.

However, it also seems clear that Mr. Broome had seen the Notice to Employees (form 57) from the Board advising them of the application for certification (see paragraph 7 of the affidavit) and further, that he was aware of the fact that any statement of desire had to be sent to the Labour Relations Board in Toronto (see paragraphs 9, 10, 12 and 14 of the affidavit). It should be noted that the Board does not maintain an office at the Lakehead, nor does it have any staff in that area.

FORM 57, THE NOTICE POSTED ON THE JOB SITE, PROVIDES IN PART AS FOLLOWS:

- 3. The terminal date fixed for this application as directed by the Board is the 15th day of June, 1965.
- 4. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED BY THE APPLICATION AND DESIRING TO MAKE REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THIS APPLICATION MUST SEND TO THE BOARD A STATEMENT IN WRITING OF SUCH DESIRE, WHICH SHALL,

- (A) CONTAIN THE RETURN MAILING ADDRESS OF THE EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES:
- (B) CONTAIN THE NAME OF THE EMPLOYER CONCERNED;
- (C) BE SIGNED BY THE EMPLOYEE OR EACH MEMBER
  OF A GROUP OF EMPLOYEES.
- 5. THE STATEMENT OF DESIRE MUST BE,
  - (A) RECEIVED BY THE BOARD NOT LATER THAN
    THE TERMINAL DATE SHOWN IN PARAGRAPH 3: OR
  - (B) IF IT IS MAILED BY <u>REGISTERED MAIL</u>

    ADDRESSED TO THE BOARD AT ITS OFFICE, 8

    YORK STREET, TORONTO 1, ONTARIO, MAILED

    NOT LATER THAN THE TERMINAL DATE SHOWN
    IN PARAGRAPH 3.
- 6. A STATEMENT OF DESIRE THAT DOES NOT COMPLY WITH PARAGRAPHS 4 AND 5 WILL NOT BE ACCEPTED BY THE BOARD.

AT THE BOTTOM OF THE FORM THERE APPEARS THE FOLLOWING:

(NOTE: ALL COMMUNICATIONS SHOULD BE ADDRESSED TO:

THE REGISTRAR, ONTARIO LABOUR RELATIONS BOARD,

8 YORK STREET, TORONTO 1, ONTARIO.)

THE UNDERLINED WORDS APPEAR IN HEAVY PRINT ON THE FORM.

IN OUR VIEW, THE INFORMATION AND INSTRUCTIONS CONTAINED IN THE FORM IN QUESTION ARE CLEAR IN EVERY RESPECT. THERE IS NOTHING IN THE FORM WHICH WOULD IN ANY WAY SUGGEST TO AN EMPLOYEE THAT HE ADOPT THE COURSE OF ACTION TAKEN BY MR. BROOME. WE ARE NOT PREPARED, THEREFORE, TO REGARD HIS ACTIONS IN ANY DIFFERENT LIGHT THAN IF, SAY, HE HAD ASKED A LAWYER COMING TO TORONTO TO DELIVER THE DOCUMENT TO THE BOARD AND THE LAWYER FAILED TO DO SO. HAVING REGARD TO THE CLEAR INSTRUCTIONS ON THE FORM, THE BOARD WOULD NOT ACCEPT A REQUEST TO REVIEW THE LATE FILING OF A DOCUMENT IN THOSE CIRCUMSTANCES. SIMILARLY, IN THE PRESENT CASE, WE MUST REJECT SUCH A REQUEST. ALTHOUGH AWARE OF FORM 57, MR. BROOME, FOR REASONS BEST KNOWN TO HIMSELF, VOLUNTARILY DECIDED TO PROCEED IN A WAY NOT ENVISAGED OR SUGGESTED BY FORM 57. HE CANNOT NOW BE HEARD TO COMPLAIN THAT HIS ACTIONS, EVEN THOUGH UNDERTAKEN IN GOOD FAITH, DID NOT BRING ABOUT THE RESULT THAT HE HAD HOPED FOR.

THE REQUEST FOR A REOPENING OF THE CASE IS DENIED."

### INDEXED ENDORSEMENTS - CERTIFICATION

10191-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. The Wallace Barnes Company Limited (Respondent) v. Canadian Springmakers' Union No. 175, N.C.C.L. (Intervener).

ON JUNE 16, 1965, THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD CONDUCTED ITS USUAL INVESTIGATION INTO ALLEGATIONS THAT CERTAIN PERSONS ON WHOSE BEHALF THE APPLICANT HAD SUBMITTED MEMBER-SHIP CARDS HAD NOT SIGNED THE CARDS OR PAID ANY MONEY ON THEIR OWN BEHALF.

THE SIX CARDS IN QUESTION WERE AMONG SOME ELEVEN CARDS WHICH THE APPLICANT ALLEGED WERE RECEIVED BY IT THROUGH THE MAIL AND THIS FACT WAS BROUGHT TO THE ATTENTION OF THE BOARD IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT IN SUPPORT OF ITS MEMBERSHIP EVIDENCE.

AS A RESULT OF THIS INITIAL INVESTIGATION BY THE BOARD, THIS MATTER WAS LISTED FOR HEARING ON MAY 31st, 1965, AT WHICH HEARING THE BOARD INTENDED TO MAKE FULL INQUIRY INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEES RELATING TO THE CARDS IN QUESTION WERE ALLEGED TO HAVE BEEN PAID.

AT THE OUTSET OF THE HEARING, THE APPLICANT ADVISED THE BOARD THAT FOLLOWING NOTICE OF HEARING, THE APPLICANT HAD CAUSED A HANDWRITING EXPERT TO INSPECT, AT THE BOARD'S OFFICES, THE CARDS IN QUESTION AND COMPARED THE SIGNATURES ON THE CARDS WITH THE SPECIMEN SIGNATURES SUPPLIED BY THE RESPONDENT.

AS A RESULT OF THIS INSPECTION AND THE OPINION RECEIVED FROM THE HANDWRITING EXPERT, THE APPLICANT INDICATED THAT IT WAS PREPARED TO ADMIT THAT FIVE OF THE SIX CARDS UNDER INVESTIGATION WERE IN FACT NOT SIGNED BY THE PERSONS WHOSE NAMES APPEARED ON THE CARDS AS MEMBERS. THE APPLICANT ALLEGED THAT THE HANDWRITING EXPERT'S ANALYSIS INDICATED THAT ALL FIVE CARDS APPEARED TO BE SIGNED BY THE SAME INDIVIDUAL AND THAT NONE OF THE PERSONS FOR WHOM THE RESPONDENT HAD SUBMITTED SPECIMEN SIGNATURES HAD SIGNED ANY OF THE FIVE CARDS. THE APPLICANT FURTHER ADVISED THE BOARD THAT WHILE IT ADMITTED THAT THE SIGNATURES ON THE FIVE CARDS WERE SIMULATED, THE APPLICANT TOOK THE POSITION THAT SOME UNKNOWN PERSON ATTEMPTED TO PERPETRATE A FRAUD ON THE APPLICANT BY FORGING SIGNATURES ON SOME OF THE APPLICANT'S MEMBERSHIP CARDS AND SENDING THESE CARDS TO THE APPLICANT BY MAIL KNOWING THAT THE APPLICANT WOULD SUBMIT THE CARDS TO THE BOARD IN SUPPORT OF THIS APPLICATION. IT WAS THE APPLICANT'S CONTENTION THAT SUCH UNKNOWN INDIVIDUAL HOPED THAT THESE FRAUDULENT CARDS WOULD BE DISCOVERED BY THE BOARD AND THAT THIS FRAUDULENT DOCUMENTARY EVIDENCE WOULD CAUSE THE APPLICATION FOR CERTIFICATION TO BE DISMISSED.

THE APPLICANT INDICATED THAT IT INTENDED TO CALL THE HANDWRITING EXPERT AS A WITNESS FOR THE PURPOSE OF ESTABLISHING THAT NONE OF THE OFFICERS OR AGENTS OF THE APPLICANT COULD HAVE FORGED THE CARDS IN QUESTION. THE APPLICANT FURTHER INDICATED THAT IT WOULD CO-OPERATE WITH THE BOARD IN EVERY WAY TO ASSIST IN IDENTIFYING THE PERSON WHO HAD ATTEMPTED TO PERPETRATE THIS FRAUD.

THE APPLICANT ARGUED THAT BECAUSE OF THE POSITION IN WHICH IT ALLEGED IT FOUND ITSELF, THE BOARD SHOULD PERMIT CERTAIN LATITUDE TO THE APPLICANT IN ORDER THAT IT BE GIVEN FULL OPPORTUNITY TO CLEAR ITS NAME BY IDENTIFYING THE PERSON WHO HAD ATTEMPTED TO "SET UP" THE APPLICANT FOR A CHARGE OF FRAUD.

THE APPLICANT FURTHER ALLEGED THAT IT HAD SUSPICIONS AS TO THE IDENTITY OF THE GUILTY PERSON AND REQUESTED THE BOARD'S ASSISTANCE TO AID THE APPLICANT IN DETERMINING HIS IDENTITY. THE APPLICANT REQUESTED THE BOARD TO COMPEL SOME TEN OR TWELVE PERSONS TO SUBMIT SPECIMEN SIGNATURES WHICH WOULD BE USED BY THE APPLICANT'S HANDWRITING EXPERT FOR THE PURPOSE OF ATTEMPTING TO ASCERTAIN IF ONE OF THE TEN OR TWELVE PERSONS HAD FABRICATED THE SIGNATURES ON THE FIVE CARDS. THIS REQUEST WAS STRONGLY OPPOSED BY THE OTHER PARTIES.

THE MEMBERSHIP CARDS IN QUESTION CONSTITUTE PART OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT. IT IS THEREFORE INCUMBENT UPON THE APPLICANT TO SUPPORT, QUALIFY OR EXPLAIN ITS EVIDENCE OF MEMBERSHIP. FOR THIS PURPOSE THE APPLICANT WILL BE PERMITTED, FOLLOWING THE BOARD'S INQUIRY OF THE BOARD'S WITNESSES INTO THE NON-PAY ALLEGATIONS, TO CALL AS A WITNESS, ANY PERSON WHOM THE APPLICANT BELIEVES WILL ASSIST THE APPLICANT.

None of the ten or twelve persons from whom the APPLICANT HAS REQUESTED SPECIMEN SIGNATURES ARE PARTIES OR WITNESSES BEFORE THE BOARD, THEREFORE THE BOARD IS NOT PREPARED AT THIS TIME TO GRANT THE REQUEST MADE BY THE APPLICANT."

ON JULY 9, 1965, FOLLOWING THE APPLICANT'S REQUEST FOR LEAVE TO WITHDRAW THIS APPLICATION, THE BOARD STATED:-

"HAVING REGARD TO THE FACT THAT THE APPLICANT'S REQUEST WAS MADE FOLLOWING THE TAKING OF A PRE-HEARING REPRESENTATION VOTE AND BEFORE THE BALLOTS WERE COUNTED, THE BOARD, FOLLOWING ITS USUAL PRACTICE, DENIES THE APPLICANT'S REQUEST AND DISMISSED THE APPLICATION.

THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFI-CATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF."

10223-65-R: United Steelworkers of America (Applicant) v. Rheem Canada Limited (Respondent) v. Rheem Employees Association (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. Pursuant to the provisions of section 42 (J) of the Board's Rules of Procedure, the Registrar directed all interested persons to refrain and desist from propaganda and electioneering from midnight on Friday, April 30th, 1965, until the vote was taken on Tuesday, May 4th, 1965.

THE INTERVENER TRADE UNION ALLEGED THAT THE APPLICANT CONTRAVENED THE DIRECTIVE OF THE REGISTRAR BY POSTING STICKERS THROUGHOUT THE PLANT. THE STICKERS WERE ADHESIVE DISCS APPROXI-MATELY 12" IN DIAMETER AND BORE THE WORDS "VOTE STEELWORKERS C.L.C."

THE PARTIES AGREED THAT THESE DISCS WERE POSTED BY SOME UNKNOWN INDIVIDUAL ON 8 OF THE LOCKERS IN THE RESPONDENT'S LOCKER ROOM DURING THE "SILENT PERIOD" SOMETIME BETWEN 4:30 P.M. ON MONDAY, MAY 3RD, AND NOON HOUR ON TUESDAY, MAY 4TH, 1965.

THE PARTIES FURTHER AGREED THAT IDENTICAL STICKERS WERE FOUND AT 4 OTHER LOCATIONS IN THE WORK AREA OF THE PLANT. WHILE IT WAS AGREED THAT THESE LATTER STICKERS WERE IN POSITION ON THE DATE OF THE VOTE, THE INTERVENER ACKNOWLEDGED THAT THEY COULD HAVE BEEN AFFIXED PRIOR TO THE "SILENT PERIOD". THERE WAS NO EVIDENCE CONCERNING THE IDENTITY OF THE PERSON WHO AFFIXED THESE STICKERS.

THE PARTIES FURTHER AGREED THAT THE WORDS "VOTE STEELWORKERS" HAD BEEN PRINTED WITH WHITE CHALK ON TWO SIDES OF A LIFT TABLE IN THE WORK AREA OF THE PLANT ON MONDAY, MAY 23RD, 1965, BY SOME UNKNOWN INDIVI-DUAL. THESE WORDS WERE ERASED ON THE DAY THE VOTE WAS TAKEN.

The intervener called 4 witnesses who testified that Mr. E. J. McGillivray, one of the employees of the respondent in the bargaining unit, did on Tuesday, May 4th, 1965, affix to the T-shirt he was wearing 4 of the stickers described above and also a Steelworkers badge. Apparently Mr. McGillivray wore this adornment for a period of one hour during which time he wagered with another employee that the Steelworkers would win the vote and he suggested to other employees that they should vote for the applicant. About one hour after he affixed the stickers to his T-shirt, another employee identified as a Steelworker supporter, on seeing Mr. McGillivray reminded him of the "silent period" directed by the Registrar and requested Mr. McGillivray removed the stickers and the badge from his T-shirt. Mr. McGillivray removed them as requested.

While Mr. McGillivray was identified as being a member of the applicant he was not an officer or official of the applicant union.

THE APPLICANT CALLED AS A WITNESS MR. STETSON, THE INTERNATIONAL REPRESENTATIVE OF THE APPLICANT WHO WAS IN CHARGE OF THE CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES. HE TESTIFIED THAT THE APPLICANT HAD DISTRIBUTED THE STICKERS IN QUESTION DURING THE COURSE OF THE CAMPAIGN AND AS LATE AS APRIL 26TH, 1965, THE MONDAY PRECEDING THE COMMENCEMENT OF THE "QUIET PERIOD".

MR. STETSON FURTHER TESTIFIED THAT HE HAD CALLED A MEETING OF THE RESPONDENT'S EMPLOYEES ON FRIDAY, APRIL 30TH, 1965, IMMEDIATELY PRIOR TO THE COMMENCEMENT OF THE "QUIET PERIOD". HE READ TO THE EMPLOYEES THE PROVISIONS OF SECTION 42 (J) OF THE BOARD'S RULES OF PROCEDURE AND INSTRUCTED THEM CONCERNING THE RESTRICTIONS IMPOSED BY THE "QUIET PERIOD".

Mr. Stetson testified that as far as he knew his instructions had been followed and he had no knowledge of the events complained of. If the applicant's members did the things which were complained of by the intervener, such activities were contrary to his instructions.

THERE WAS NO EVIDENCE THAT ANY OF THE OFFICERS OR AGENTS
OF THE APPLICANT HAD DONE ANY OF THE THINGS TO WHICH THE INTERVENER
HAS TAKEN EXCEPTION AND THERE IS NO EVIDENCE FROM WHICH THE BOARD
COULD INFER THAT ANY OF THE APPLICANT'S OFFICERS OR AGENTS COULD HAVE
PERFORMED THESE ACTS.

HAVING REGARD TO ALL THE EVIDENCE, WE FIND THAT THE THINGS OF WHICH THE INTERVENER COMPLAINS WERE NOT DONE BY THE APPLICANT'S OFFICIALS OR AGENTS OR ON THEIR INSTRUCTIONS, BUT WERE DONE BY RANK AND FILE EMPLOYEES CONTRARY TO THE SPECIFIC INSTRUCTIONS GIVEN TO THE EMPLOYEES BY AN OFFICIAL OF THE APPLICANT AT THE SPECIAL MEETING HELD FOR THAT PURPOSE.

WHILE THE IDENTITY OF THE INDIVIDUAL WHO PLACED THE STICKERS AND THE PRINTING ON THE OBJECTS IN THE PLANT IS UNKNOWN, THE INTERVENER ARGUES THAT IT IS REASONABLE TO INFER THAT A SUPPORTER OR MEMBER OF THE APPLICANT CAUSED THE STICKERS AND THE PRINTING TO BE AFFIXED. THE INTERVENER FURTHER ARGUED THAT THE APPLICANT MUST ASSUME RESPONSIBILITY FOR THESE ACTS AND BE TREATED AS THE PERPETRATOR OF THE DEEDS COMPLAINED OF.

BEFORE DEALING WITH THE APPLICANT'S ARGUMENT, WE WOULD POINT OUT THAT SINCE (WITH THE EXCEPTION OF THE MCGILLIVRAY INCIDENT) THERE WAS NO EVIDENCE WITH RESPECT TO THE IDENTITY OF THE INDIVIDUAL WHO PERFORMED THE ACTS COMPLAINED OF, THE EVIDENCE IN THIS CASE IS THEREFORE OPEN TO THE CONCLUSION THAT SOME PERSON WHO WANTED TO TRY TO UPSET THE RESULT OF THE VOTE COULD HAVE PERFORMED THE ACTS COMPLAINED OF.

HOWEVER, FOR THE PURPOSE OF DEALING WITH THE APPLICANT'S ARGUMENT, WE WILL ASSUME THAT ALL THE STICKERS AND WRITINGS WERE AFFIXED BY EMPLOYEES WHO WERE MEMBERS OF THE APPLICANT AND THAT MR. McGillivray was also a member of the applicant.

On the evidence before us we are not prepared to find that there was an organized campaign by the applicant or by a substantial number of employees to contravene the Registrar's direction and thereby materially affect the outcome of the vote. In addition to the McGillivray incident, there were 14 individual stickers or printings in a plant where 112 employees were employed in the bargaining unit. In these circumstances and having regard to the nature of the alleged

BREACHES OF THE REGISTRAR'S DIRECTION, WE FIND THAT THESE WERE ISOLATED EVENTS AND COULD NOT HAVE MATERIALLY AFFECTED THE OUTCOME OF THE VOTE. IN SUPPORT OF THIS FINDING WE WOULD POINT OUT BY WAY OF EXAMPLE THAT IT WOULD BE MOST UNLIKELY THAT THE EMPLOYEE WITH WHOM MR. MCGILLIVRAY PLACED HIS WAGER WOULD HAVE VOTED IN FAVOUR OF THE APPLICANT.

THE ADHESIVE STICKERS COULD HAVE BEEN READILY REMOVED OR OBLITERATED. WHILE THE OFFICIALS OR AGENTS OF THE APPLICANT HAD NO OPPORTUNITY TO REMOVE OR OBLITERATE THE STICKERS, BECAUSE THEY HAD NO ACCESS TO THE PLANT, THERE WAS NO EVIDENCE THAT ANY ATTEMPT WAS MADE BY THE INTERVENER OR THE RESPONDENT'S TO DO SO.

WE ARE SATISFIED THAT THE RELEVANT FACTS OF THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED CASE, C.C.H. CANADIAN LABOUR LAW CASES, Vol. 2, 1960-1964, ¶16,257, WHEREIN THE BOARD DEALT WITH A SIMILAR PROBLEM, DO NOT MATERIALLY DIFFER FROM THE FACTS IN THE INSTANT CASE. HAVING REGARD TO ALL THE EVIDENCE AND OUR FINDINGS AS SET OUT ABOVE, WE ACCORDINGLY FIND THAT THE EVIDENCE IN THE INSTANT CASE DOES NOT CONSTITUTE GROUNDS FOR VOIDING THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER."

BOARD MEMBER H.F. IRWIN, DISSENTING. SAID:-

"THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD, AS REQUESTED BY THE APPLICANT, DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

FOLLOWING THE VOTE AND IN ACCORDANCE WITH THE NOTICE OF REPORT OF RETURNING OFFICER WHERE PRE-HEARING REPRESENTATION VOIE HAS BEEN HELD, FORM 50, THE INTERVENER FILED OBJECTIONS TO THE VOTE CLAIMING THAT THERE HAD BEEN A VIOLATION OF THE DIRECTIONS OF THE REGISTRAR THAT ALL INTERESTED PERSONS REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT ON FRIDAY, APRIL 30TH, 1965, UNTIL THE VOTE WAS TAKEN ON TUESDAY, MAY 4TH, 1965, HEREINAFTER REFERRED TO AS THE SILENT PERIOD.

The electioneering and propaganda alleged by the intervener consisted of -

- (A) The posting of stickers, which were adhesive paper discs approximately 12" in diameter and on which were printed the words "Vote Steelworkers C.L.C.", on 8 Lockers in the Locker room of the respondent's plant during the silent period sometime between 4:30 p.m. on Monday, May 3rd, and noon hour on Tuesday, May 4th.
  - (B). THE POSTING OF IDENTICAL STICKERS WHICH REMAINED ON DISPLAY IN FOUR OTHER WORK AREAS IN THE PLANT DURING THE SILENT PERIOD INCLUDING THE DAY OF THE VOTE, MAY 4th.

- (c) THE WORDS "VOTE STEELWORKERS" WERE PRINTED WITH WHITE CHALK ON TWO SIDES OF A LIFT TABLE IN THE WORK AREA OF THE PLANT DURING THE SILENT PERIOD ON May 3Rd.
- (D) AN EMPLOYEE OF THE RESPONDENT IN THE VOTING CONSTITUENCY, E. J. McGILLIVRAY, DID DURING THE SILENT PERIOD ON THE DAY OF THE VOTE, MAY 4TH, CARRY ON PROPAGANDA AND ELECTIONEERING BY
  - (1) AFFIXING TO THE OUTSIDE OF THE T-SHIRT HE
    WAS WEARING FOUR OF THE STICKERS REFERRED TO
    ABOVE AND ALSO A STEELWORKERS BADGE. HE WORE
    THIS ELECTIONEERING PROPAGANDA FOR A PERIOD
    OF ONE HOUR.
    - (II) WAGERING WITH ANOTHER EMPLOYEE THAT THE STEELWORKERS WOULD WIN THE VOTE.
    - (111) SOLICITING OTHER EMPLOYEES TO VOTE FOR THE STEELWORKERS.

THE PARTIES AGREED THAT THE POSTING OF THE STICKERS AND THE PRINTING OF THE WORDS "VOTE STEELWORKERS" AS SET OUT IN (A), (B) AND (C) OF PARAGRAPH 4 ABOVE ACTUALLY TOOK PLACE DURING THE SILENT PERIOD. THERE IS NO EVIDENCE BEFORE THE BOARD AS TO THE EXACT IDENTITY OF THE PERPETRATORS.

IN RESPECT OF THE ACTIONS OF E. J. MCGILLIVRAY, AN EMPLOYEE OF THE RESPONDENT, THE UNCONTRADICTED EVIDENCE ADDUCED AT THE HEARING IS THAT DURING THE SILENT PERIOD ON THE DAY OF THE ELECTION HE WORE THE STICKERS BEARING THE WORDING "VOTE STEELWORKERS" AND A STEELWORKERS BADGE IN HIS WORK AREA FOR A PERIOD OF ABOUT ONE HOUR BEFORE ANOTHER EMPLOYEE, IDENTIFIED AS A STEELWORKER SUPPORTER, REMINDED HIM OF THE SILENT PERIOD DIRECTED BY THE REGISTRAR AND "REQUESTED" HIM TO REMOVE THE STICKERS AND BADGE. HE DID SO AS "REQUESTED". HE ALSO WAGERED WITH AN EMPLOYEE THAT THE STEELWORKERS WOULD WIN THE ELECTION AND SOLICITED OTHER EMPLOYEES TO VOTE FOR THE STEELWORKERS. IF THESE ACTIONS OF MCGILLIVRAY, PER SE, DO NOT CONSTITUTE ELECTIONEERING AND PROPAGANDA DURING THE SILENT PERIOD THEN SUCH THINGS DO NOT EXIST.

THE FIRST QUESTION BEFORE THE BOARD, THEREFORE, IS WHETHER OR NOT THE PROPAGANDA AND ELECTIONEERING ENGAGED IN BY MCGILLIVRAY VIOLATE THE DIRECTION OF THE REGISTRAR.

THE DIRECTION OF THE REGISTRAR AS SET OUT IN THE NOTICE OF TAKING OF VOTE, FORM 48, READS AS FOLLOWS:-

"I DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF FRIDAY, THE 30TH DAY OF APRIL 1965, UNTIL THE VOTE IS TAKEN."

(EMPHASIS ADDED)

THE VOTE WAS TAKEN ON TUESDAY, MAY 4TH, 1965. THE PROPAGANDA AND ELECTIONEERING ENGAGED IN BY MCGILLIVRAY, THEREFORE, TOOK PLACE BEFORE THE VOTE WAS TAKEN AND DURING THE SILENT PERIOD WHEN SUCH ACTIONS WERE PROHIBITED BY THE DIRECTION OF THE REGISTRAR.

IN ADJUDICATING THIS MATTER, FULL WEIGHT MUST BE GIVEN THE AMENDMENTS MADE TO THE BOARD'S RULES OF PROCEDURE AND REGULATIONS IN 1961. PRIOR TO THESE AMENDMENTS, THE INSTRUCTIONS OF THE REGISTRAR WERE DIRECTED TO "ALL INTERESTED PARTIES" AND NOT TO "ALL INTERESTED PERSONS" AS AT PRESENT. THE AMENDMENT CLEARLY CONTEMPLATED THAT THE INSTRUCTIONS OF THE REGISTRAR WOULD SUBSEQUENTLY APPLY TO INTERESTED PERSONS AS WELL AS TO INTERESTED PARTIES.

IS McGILLIVRAY AN "INTERESTED PERSON"? THE EVIDENCE DISCLOSES THAT HE IS AN EMPLOYEE INCLUDED IN THE VOTING CONSTITUENCY AND A MEMBER OF THE STEELWORKERS UNION. HE WAS ELIGIBLE TO VOTE AND WOULD BE BOUND BY THE RESULT OF THE VOTE IN SO FAR AS THE SELECTION OF THE BARGAINING AGENT WAS CONCERNED. HE WORE STICKERS BEARING THE WORDS "VOTE STEELWORKERS C.L.C." AND A STEELWORKERS BADGE. HE WAGERED WITH ANOTHER EMPLOYEE THAT THE STEELWORKERS WOULD WIN THE VOTE. HE SOLICITED OTHER EMPLOYEES TO VOTE FOR THE STEELWORKERS. THE LAST THREE ACTS WERE COMMITTED IN THE WORK AREA DURING THE SILENT PERIOD. I CANNOT CONCEIVE OF ANY PERSON BEING MORE INTERESTED IN THE RESULT OF THE VOTE THAN MCGILLIVRAY.

THE REPORT OF THE RETURNING OFFICER IN RESPECT OF THE VOTE SHOWED THE NUMBER OF NAMES ON THE REVISED VOTERS LIST AND THE COUNT OF THE BALLOTS AS FOLLOWS:-

Number on revised voters! List	107
Number of ballots cast	107
Number of Ballots excluding segregated Ballots cast by persons whose names Appear on voters! List	105
Number of segregated ballots cast by persons whose names appear on voters!	1
NUMBER OF SEGREGATED BALLOTS WHOSE NAMES DO NOT APPEAR ON VOTERS! LIST	1
Number of ballots marked in favour of applicant	57
Number of Ballots marked in favour of Intervener	48
BALLOTS SEGREGATED AND NOT COUNTED	2

EVERYONE OF THE 107 EMPLOYEES WHO CAST BALLOTS IN THE VOTE WERE INTERESTED PERSONS. IF McGILLIVRAY CAN DEFY THE DIRECTIONS OF THE REGISTRAR AND CARRY ON HIS ELECTIONEERING AND PROPAGANDA DURING THE SILENT PERIOD WITH IMPUNITY, THEN THE SAME FREEDON OF ACTION DURING THE SILENT PERIOD IS OPEN WITH IMPUNITY TO THE OTHER 106 EMPLOYEES AND THE SILENT PERIOD COULD BECOME THE PERIOD DURING WHICH THE MOST INTENSIVE ELECTIONEERING AND PROPAGANDA TAKES PLACE AND MAKE A COMPLETE MOCKERY OF THE DIRECTIONS OF THE REGISTRAR.

The basic principles underlying the Board's "no propaganda" rule and the reasons for estblishing it are clearly set out in the Rogers Majestic Case, (1948) D.L.S. 7-1382 as follows:-

THE "NO PROPAGANDA" RULE IS AN ABSOLUTE PROHIBITION. ITS PRIMARY OBJECT IS TO ENSURE THAT, SO FAR AS POSSIBLE, THE VOTE WILL BE CONDUCTED IN AN ATMOSPHERE OF CALM AND THAT EMPLOYEES WHO ARE TO PARTICIPATE IN THE VOTE SHALL NOT BE SUBJECTED TO PARTISAN PRESSURES OR INFLUENCES AS THE VOTING DAY APPROACHES. THE BOARD'S VIEW HAS ALWAYS BEEN THAT AT THAT POINT THE INDIVIDUAL EMPLOYEE SHOULD BE LEFT FREE TO MAKE A PURELY PERSONAL DECISION AS TO HOW HE SHALL VOTE.

IT CANNOT SERIOUSLY BE ARGUED THAT THE BOARD SHOULD, IN A SITUATION WHICH IS HIGHLY CHARGED EMOTIONALLY OR IN WHICH THERE IS A HEATED CONTEST BETWEEN RIVAL EMPLOYEES ORGANIZATIONS, TAKE A MORE LENIENT VIEW OF WHAT IT CONCEIVES TO BE AN INFRACTION OF THE "NO PROPAGANDA" RULE THAN IT WOULD IN NORMAL CIRCUMSTANCES. THE LOGICAL CONCLUSION TO SUCH A POLICY WOULD BE TO APPLY THE RULE LEAST STRICTLY WHERE IT IS MOST NECESSARY. FURTHERMORE, THE BOARD IS NOT CONCERNED AS TO WHETHER ELECTIONEERING WHICH IS INDULGED IN DURING THE "NO PROPAGANDA" PERIOD AFFECTS THE RESULTS OF THE VOTE. WERE THE BOARD, IN CONSTRUING THE "NO PROPAGANDA" RULE, TO TAKE EXCEPTION ONLY TO ELECTIONEERING WHICH CAN BE PROVEN TO HAVE INFLUENCED THE RESULT OF THE VOTE, THE PARTIES TO CERTIFICATION PROCEEDINGS WOULD BE ENCOURAGED TO ELECTIONEER, USING SUCH METHODS THAT PROOF OF ITS AFFECT ON THE VOTE WOULD BE DIFFICULT OR IMPOSSIBLE TO OBTAIN.

This case is easily distinguishable from the International Nickel Company of Canada, Limited Case, C.C.H. Canadian Labour Law Cases, Vol. 2, 1960-1964, \$\pi 16,257\$. In that case, there were over 14,000 persons in the bargaining unit and the company's operations were spread over a wide geographical territory with individual establishments as much as several miles apart. In the instant case, there are only 107 employees in the bargaining unit and all located in the one plant in which McGillivray's electioneering and propaganda took place on the day of the vote.

IF A REPRESENTATION VOTE IS NOT CARRIED OUT IN ACCORDANCE WITH THE DIRECTIONS OF THE REGISTRAR, THEN IT IS NOT A VALID VOTE.
THE GROUND RULES HAVE BEEN VIOLATED. THE CIRCUMSTANCES, ATMOSPHERE AND CONDITIONS SURROUNDING THE TAKING OF THE VOTE AS CONTEMPLATED BY THE DIRECTIONS OF THE REGISTRAR DID NOT PREVAIL AND A NEW VOTE SHOULD BE DIRECTED.

FOR THESE REASONS, I FIND THAT E. J. McGILLIVRAY, AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY, IS AN INTERESTED PERSON WITHIN THE MEANING OF THE DIRECTIONS OF THE REGISTRAR (SUPRA) AND THAT HE ENGAGED IN ELECTIONEERING AND PROPAGANDA DURING THE SILENT PERIOD CONTRARY TO THE DIRECTION OF THE REGISTRAR AND I WOULD HAVE DIRECTED A NEW VOTE.

IN VIEW OF THE FACT THAT FORM 48 NOW ENJOINS ALL INTERESTED PERSONS AND IS NOT RESTRICTED TO PARTIES AS FORMERLY, IT IS NOT NECESSARY FOR ME TO MAKE A DETERMINATION OF THE RESPONSIBILITY OF THE APPLICANT UNION AS A PARTY SINCE THE ACTS COMPLAINED OF IN RESPECT OF McGillivray violated the specific directions of the Registrar and were committed by an interested person within the meaning of the Said Directions.

HAVING REGARD FOR MY FINDING CONCERNING THE ACTIVITIES OF MCGILLIVRAY, IT IS NOT NECESSARY FOR ME TO MAKE ANY DECISION REGARDING THE OTHER VIOLATIONS ALLEGED BY THE INTERVENER."

Concerning Mr. Irwin's dissent, the Board majority said: "We wish to direct attention to the fact that the Rogers Majestic Case, (1948), D.L.S. 7-1382 was decided by the Board at a time when the prohibition imposed by the "silent period" extended only to the <u>parties</u> to a proceeding.

THE FACTS OF THAT CASE ARE DISTINGUISHABLE FROM THE FACTS OF THE INSTANT CASE IN THAT THE RESTRICTIONS IMPOSED BY THE "SILENT PERIOD" IN THE ROGERS MAJESTIC CASE WERE VIOLATED BY A PARTY TO THE PROCEED-INGS; WHEREAS IN THIS CASE, THE ACTS COMPLAINTED OF WERE PERFORMED BY A RANK AND FILE EMPLOYEE.

A PARTY TO A PROCEEDING BEARS A MUCH HEAVIER ONUS THAN A RANK AND FILE EMPLOYEE. THE "ABSOLUTE PROHIBITION" REFERRED TO BY THE BOARD IN THE ROGERS MAJESTIC CASE COULD NOT POSSIBLE APPLY TO RANK AND FILE EMPLOYEES BECAUSE IT WOULD BE IMPOSSIBLE TO ENFORCE. IT WOULD BE A VERY RARE CASE INDEED, WHERE RANK AND FILE EMPLOYEES CEASE TALKING ABOUT AN IMPENDING VOTE AMONG THEMSELVES FOR A THREE DAY PERIOD IMMEDIATELY PRIOR TO THE TAKING OF THE VOTE. TO BELIEVE OTHERWISE WOULD BE TO DENY THE VERY NATURE OF HUMAN BEINGS.

THE EXTENSION OF THE PROHIBITION AGAINST PROPAGANDA TO RANK AND FILE EMPLOYEES WAS INTENDED BY THE BOARD TO CONTROL UNWARRANTED INFLUENCE OF THE VOTERS. WHILE ISOLATED OCCURRENCES WHICH COULD NOT REASONABLY AFFECT THE OUTCOME OF THE VOTE SHOULD BE DISCOURAGED, THEY CANNOT BE HELD TO VITIATE THE VOTE. TO HOLD OTHERWISE WOULD

BE TO REQUIRE THE BOARD TO CONDUCT REPEATED REPRESENTATION VOTES BECAUSE OF ISOLATED IRRESPONSIBLE ACTS OF INDIVIDUAL EMPLOYEES AND SUCH ACTS COULD BE USED TO EFFECTIVELY THWART THE PURPOSE OF A REPRESENTATION VOTE.

SINCE WE ARE SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE BEEN DISCLOSED BY THE REPRESENTATION VOTE CONDUCTED IN THIS CASE, NO PURPOSE COULD POSSIBLY BE SERVED BY DIRECTING A NEW REPRESENTATION VOTE BE TAKEN IN THIS MATTER."

10347-65-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. BERTRAND & FRERE CONSTRUCTION Cc. LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

- "THE RESPONDENT FILED WITH THE BOARD IN ITS APPLICATION
A LIST CONTAINING THE NAMES OF ALL OF THE EMPLOYEES IN THE
BARGAINING UNIT DESCRIBED BY THE APPLICANT. THE LIST ON THE FOUR
SCHEDULES A, B, C AND D TOTAL SIXTY-TWO EMPLOYEES. FIFTEEN OF
THESE EMPLOYEES WERE LISTED ON SCHEDULE C, THAT IS, EMPLOYEES
WHO WERE NOT ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE
APPLICATION BY REASON OF LAYOFF.

AT THE HEARING OF THE APPLICATION ON MAY 25TH, 1965, WHILE GIVING THE COUNT OF THE EMPLOYEES AS PROVIDED BY THE RESPONDENT, THE CHAIRMAN INFORMED THE PARTIES THAT SINCE ELEVEN OR POSSIBLY TWELVE OF THE EMPLOYEES (THE DATE OF LAYOFF OF ONE EMPLOYEE WAS NOT INDICATED) ON SCHEDULE C HAD NOT BEEN AT WORK FOR A PERIOD OF A MONTH PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION AND WERE NOT EXPECTED TO RETURN FOR A MONTH AFTER THAT DATE, THESE EMPLOYEES WOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT. UPON INQUIRY BY COUNSEL FOR THE RESPONDENT THE CHAIRMAN INFORMED HIM THAT THE ABOVE PRACTICE WAS THE RULE-OFTHUMB USED BY THE BOARD TO DETERMINE WHETHER AN EMPLOYEE OR EMPLOYEES ARE TO BE INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT.

BY AN ENDORSEMENT DATED MAY 26TH, 1965 THE BOARD FOUND AN APPROPRIATE BARGAINING UNIT AND WAS SATISFIED ON THE MEMBERSHIP EVIDENCE THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE MATERIAL TIME, WERE MEMBERS OF THE APPLICANT UNION. THE BOARD, IN THE SAME ENDORSEMENT, ACCORDINGLY DIRECTED THE TAKING OF A REPRESENTATION VOTE OF THE BARGAINING UNIT EMPLOYEES.

BY A LETTER DATED May 26TH, 1965 WHICH WAS DELIVERED TO THE BOARD ON THE SAME DATE, COUNSEL FOR THE RESPONDENT REQUESTED THAT THE BOARD RECONSIDER ITS DECISION AND INCLUDE ALL OF THE FIFTEEN PERSONS LISTED ON SCHEDULE C IN THE BARGAINING UNIT. IN SUPPORT OF HIS REQUEST COUNSEL ARGUED THAT THE BOARD'S RULE-OF-THUMB SHOULD NOT APPLY TO THE CONSTRUCTION INDUSTRY BECAUSE OF ITS SEASONAL NATURE.

THE LAST SENTENCE OF PARAGRAPH 1 OF THE LETTER OF COUNSEL FOR THE RESPONDENT READS: "You will recall that I submitted at the time that the rule-of-thumb was not appropriate to the case and that it should not be adopted." The first sentence of paragraph 4 of the same letter reads: "But as I pointed out at the time, the dates of lay-off and recall shown in the schedule show clearly the seasonal nature of the Respondent's business." The division of the Board that heard the application has no record of the above representations being made by counsel for the respondent.

EVEN ASSUMING THAT THE REPRESENTATIONS OUTLINED IN COUNSEL FOR THE RESPONDENT'S LETTER OF MAY 26TH HAD IN FACT BEEN MADE AT THE HEARING ON MAY 25TH, THE BOARD FINDS NO REASON TO ALTER ITS ENDORSEMENT OF MAY 26TH, 1965. WE WOULD FIRST POINT OUT THAT THE PERSONS LISTED ON SCHEDULE C ARE NOT EXCLUDED FROM THE BARGAINING UNIT. THAT IS TO SAY, AT SUCH TIME AS THEY RETURNED TO WORK, IF THEY FALL WITHIN THE DESCRIPTION OF THE BARGAINING UNIT, THEY ARE AUTOMATICALLY INCLUDED IN THE BARGAINING UNIT. THE EMPLOYEES IN QUESTION WERE ONLY EXCLUDED FROM THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT.

THE REASON FOR THE BOARD'S PRACTICE IS THAT EMPLOYEES WHO HAVE NOT BEEN AT WORK FOR A PERIOD OF A MONTH PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION GENERALLY HAVE BEEN ABSENT DURING THE ORGANIZING CAMPAIGN AND HAVE NOT HAD AN OPPORTUNITY TO EXPRESS THEIR WISHES FOR OR AGAINST THE UNION. WE WOULD ADD THAT IF THE UNION DOES SUBMIT MEMBERSHIP EVIDENCE FOR SUCH EMPLOYEES, THE EVIDENCE IS NOT INCLUDED IN THE COUNT FOR THE UNION. WHEN EMPLOYEES ARE ABSENT ON THE DATE OF THE MAKING OF THE APPLICATION AND ARE NOT EXPECTED TO RETURN OR ARE UNLIKELY TO RETURN TO WORK FOR MORE THAN A MONTH AFTER THE MAKING OF THE APPLICATION, SUCH EMPLOYEES ARE NOT INCLUDED IN THE NUMBER OF BARGAINING UNIT EMPLOYEES FOR THE PURPOSE OF THE COUNT, SINCE IT IS UNCERTAIN WHETHER SUCH EMPLOYEES WHO HAVE BEEN ABSENT FOR THAT LENGTH OF TIME, IN FACT, WILL RETURN TO WORK. (SEE COLUMBUS MCKINNON CASE, O.L.R.B. MONTHLY REPORT FOR JULY, 1962, P. 132, AND PEJAY PACKING CASE, O.L.R.B. MONTHLY REPORT FOR AUGUST, 1963, P. 275). THE ABOVE OUTLINED PRACTICES OF THE BOARD ARE SUBJECT TO VARIATIONS ACCORDING TO THE PARTICULAR CIRCUMSTANCES OF ANY GIVEN CASE.

WE WOULD MENTION THAT IT WAS NOT SUGGESTED BY COUNSEL FOR THE RESPONDENT THAT THE RESPONDENT IS AN "EMPLOYER" OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 90(A) OF THE LABOUR RELATIONS ACT. IN ANY EVENT, THE APPLICATION WAS NOT MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS (SECTIONS 90 TO 96) OF THE LABOUR RELATIONS ACT. WE WOULD POINT OUT THAT IF, IN FACT, THE APPLICANT HAD BEEN ENTITLED TO MAKE ITS APPLICATION UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT AND HAD DONE SO, THE PRACTICE OF THE CONSTRUCTION INDUSTRY DIVISION OF THE BOARD IS TO INCLUDE IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT ONLY THOSE EMPLOYEES WHO ARE IN THE EMPLOY OF THE EMPLOYER ON THE ACTUAL DATE OF THE MAKING OF THE APPLICATION.

THE REQUEST OF COUNSEL FOR THE RESPONDENT CONTAINED IN HIS LETTER OF May 26th, 1965 ACCORDINGLY IS DENIED."

#### INDEXED ENDORSEMENTS - STRIKE UNLAWFUL

10528-65-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. Local 598 of the Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION PURSUANT TO SECTION 67 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT FROM AND INCLUDING THE 11TH DAY OF JUNE, 1965, THE RESPONDENT TRADE UNION HAS CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF EMPLOYEES OF THE APPLICANT EMPLOYED "IN THE TORONTO AREA" - - "AND THE NIAGARA FALLS AREA". WHILE THE APPLICATION, AS FILED WITH THE BOARD, DOES NOT PARTICULARIZE THE PROJECTS CONCERNED IN THESE AREAS, COUNSEL AT THE HEARING INDICATED THAT THE DECLARATION SOUGHT BY THE APPLICATION INVOLVED ITS EMPLOYEES AT THREE PROJECTS IN THE TORONTO AREA, NAMELY, THE PSYCHIATRIC INSTITUTE, THE TORONTO-DOMINION CENTRE AND THE DUPONT PROJECT AT AJAX AND AT TWO PROJECTS IN THE NIAGARA FALLS AREA, NAMELY, THE SKYLINE Tower and the Diplomat Hotel. It is alleged that the employees AT THE PROJECTS IN QUESTION ARE BOUND BY A SUBSISTING PROVINCIAL-WIDE COLLECTIVE AGREEMENT MADE BETWEEN THE APPLICANT AND A COUNCIL OF UNIONS. THE RESPONDENT UNION DID NOT ATTEND THE HEARING.

This Board has long taken the position that the nonAPPEARANCE OF A RESPONDENT IN A CASE SUCH AS THE PRESENT, DOES
NOT RELIEVE THE APPLICANT OF THE ONUS OF PROVING ALL OF THE
MATERIAL INGREDIENTS OF ITS CASE BY CREDIBLE AND ADMISSIBLE
EVIDENCE. IT IS MANIFEST THAT, FOR PURPOSES OF THIS CASE AND
APART FROM ANY CONSIDERATION OF WHETHER THE BOARD IN ITS
DISCRETION WOULD GRANT A DECLARATION, THE MINIMUM CONDITIONS
PRECEDENT TO ANY DECLARATION BEING GRANTED ARE THAT:

- (1) A STRIKE OF THE EMPLOYEES OF THE APPLICANT IN FACT TOOK PLACE AT THE PROJECTS IN QUESTION;
- (2) THAT THE SAID STRIKING EMPLOYEES WERE IN FACT BOUND BY THE AGREEMENT IN QUESTION OR THAT OTHER CIRCUMSTANCES EXISTED WHICH WOULD RENDER A STRIKE BY THEM AT THIS TIME UNLAWFUL; AND
- (3) THAT THE RESPONDENT IN FACT CALLED OR AUTHORIZED THE STRIKE.

THE EVIDENCE PLACED BEFORE US AND RELIED ON BY COUNSEL FOR THE APPLICANT AS CONSTITUTING PROOF OF THE APPLICANT'S ENTITLEMENT TO A DECLARATION IS PATENTLY DEFICIENT OF ANY FACTS FROM WHICH WE COULD REASONABLY FIND THAT A STRIKE OF EMPLOYEES AT THE PROJECTS CONCERNED WAS CALLED OR AUTHORIZED BY THE RESPONDENT UNION.

MOREOVER, THE EVIDENCE RELATING TO THE ISSUE AS TO WHETHER A STRIKE TOOK PLACE AND IS IN FACT IN PROGRESS AT THESE PROJECTS BY THE EMPLOYEES ALLEGED AND WHETHER THEY ARE BOUND BY THE PROVINCE WIDE AGREEMENT IN QUESTION LEAVES MUCH TO SPECULATION.

IT NEED HARDLY BE SAID THAT WHATEVER, IN FACT, HAS
TAKEN PLACE AT THE PROJECTS OF THE APPLICANT, THIS BOARD, IN
CONSIDERING THE APPLICATION, MUST CONFINE AND BASE ITS DECISION
SOLELY AND ENTIRELY ON THE EVIDENCE WHICH THE APPLICANT HAS
SEEN FIT TO PLACE BEFORE IT.

THE APPLICATION IS DISMISSED."

10549-65-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. CARPENTERS DIST COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS Nos. 27,3233,681,3227,666,1 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application by Pigott Construction Company Limited for a declaration that a strike, called or authorized by the respondent, Carpenters District Council of Toronto and Vicintly, is unlawful.

THE APPLICANT RELIES UPON THE PROVISIONS OF A DOCUMENT WHICH PURPORTS TO BE A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND A "PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS" AND SEVERAL UNIONS, INCLUDING THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, THE PARENT UNION OF THE RESPONDENT. THIS DOCUMENT. HEREINAFTER DESCRIBED AS THE PROVINCIAL AGREEMENT, IS DATED SEPTEMBER 18th, 1963. THERE EXISTED, AT THE TIME THE PROVINCIAL AGREEMENT WAS EXECUTED. A COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTOR'S SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND THE RESPONDENT. BOTH THE APPLICANT AND THE RESPONDENT WERE BOUND BY THAT AGREEMENT, HEREINAFTER DESCRIBED AS THE TORONTO CONSTRUCTION Association Agreement, which came into effect on July 25th, 1963, and WHICH EXPIRED ON APRIL 30TH, 2965. By THE PROVISIONS OF SECTION 38 OF THE LABOUR RELATIONS ACT THE APPLICANT AND THE RESPONDENT WERE BOUND BY THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT UNTIL ITS EXPIRY

At the commencement of the hearing, counsel for the respondent contended that even if the Provincial Agreement were otherwise a valid collective agreement binding on the parties (which he denied) it would violate the provisions of section 391 of The Labour Relations Act. Section 39 is as follows:-

OPERATION FOR AN UNSPECIFIED TERM OR FOR A TERM OF LESS THAN ONE YEAR, IT SHALL BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE.

- (2) Notwithstanding subsection 1, the parties may, before or after a collective agreement has ceased to operative, agree to continue its operation or any of its provisions for a period of less than one year while they are bargaining for its renewal, with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit.
- (3) A COLLECTIVE AGREEMENT SHALL NOT BE TERMINATED BY THE PARTIES BEFORE IT CEASES TO OPERATE IN ACCORDANCE WITH ITS PROVISIONS OR THIS ACT WITHOUT THE CONSENT OF THE BOARD ON THE JOINT APPLICATION OF THE PARTIES.
- (4) Notwithstanding anything in this section, where an employer joins an employers' organization that is a party to a collective agreement with a trade union or council of trade unions and he agrees with the trade union or council of trade unions to be bound by the collective agreement between the trade union or council of trade unions and the employers' organization, the agreement ceases to be binding upon the employer and the trade union or council of trade unions at the same time as the agreement between the employers' organization and the trade union or council of trade unions ceases to be binding.
- (5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation.

Section 39 Refers to the termination or extension of a collective agreement by the parties and it is clear that the parties to the Provincial Agreement, not being the same as the parties to the Toronto Construction Association Agreement, could not without proper authorization make any agreement which would have the effect of terminating or extending the Toronto Construction Association Agreement. If the assumption is made that there was such authorization, so that the Provincial Agreement might be regarded as an agreement between the parties to the Toronto Construction Association Agreement, the effect of the Provincial Agreement might well be as counsel suggested, that is, it would have the

EFFECT OF EITHER TERMINATING OR EXTENDING THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT, AND THIS WOULD HAVE CONSTITUTED A VIOLATION OF SECTION 39. THE EFFECT OF SUCH VIOLATION, HOWEVER, IS NOT CLEAR AND THE BOARD. IN VIEW OF THE DISPOSITION WHICH IT MAKES OF THIS APPLICATION ON OTHER GROUNDS, MAKES NO RULING ON THIS POINT. IT COULD BE ARGUED THAT THE PROVISIONS OF SECTION 39 ARE DIRECTORY ONLY AND THAT AN AGREEMENT VIOLATING SECTION 39 MAY NEVERTHELESS BE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT. IT SHOULD BE OBSERVED, IN ANY EVENT, THAT FOR COUNSEL'S ARGUMENT TO SUCCEED IT IS NECESSARY TO ASSUME NOT ONLY THAT THE TRADE UNIONS PARTY OF THE PROVINCIAL AGREEMENT WERE AUTHORIZED BY THE TRADE UNIONS PARTY TO THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT BUT ALSO THAT THE EMPLOYER PARTY TO THE PROVINCIAL AGREEMENT WAS AUTHORIZED BY THE EMPLOYER PARTY TO THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT. NO EVIDENCE WAS PRESENTED WHICH WOULD LEND CREDENCE TO SUCH ASSUMPTION. FINALLY, ON THE ASSUMPTION THAT THE PROVINCIAL AGREEMENT WAS IN EFFECT THE ACT OF THE PARTIES TO THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT THE QUESTION MAY BE RAISED WHETHER ONE OF THESE PARTIES MAY, IN THE CIRCUMSTANCES, BE HEARD TO PLEAD THE ILLEGALITY OF THE AGREEMENT TO WHICH HE WAS A PARTY. THE BOARD DOES NO MORE THAN RAISE THESE QUESTIONS SINCE AT LEAST ONE OF THE ASSUMPTIONS ON WHICH THE ARGUMENT RESTS CANNOT BE SUPPORTED BY ANY OF THE EVIDENCE. ON THE EVIDENCE BEFORE US. THE PARTIES TO THE PROVINCIAL AGREEMENT ARE NOT THE SAME AS THE PARTIES TO THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT, AND THE PROVISIONS OF SECTION 39 DO NOT APPLY.

THE PROVINCIAL AGREEMENT ON WHICH THE APPLICANT RELIES PROVIDES THAT THE APPLICANT RECOGNIZES "A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS" AS EXCLUSIVE BARGAINING AGENT FOR ITS EMPLOYEES. IN AN APPENDIX TO THE AGREEMENT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA IS LISTED AS MEMBER OF THE "PROVINCIAL COUNCIL". NEITHER OF THESE ORGANIZATIONS WAS A PARTY TO THE TORONTO CONSTRUCTION ASSOCIATION AGREEMENT. THE LATTER AGREEMENT, HOWEVER, CONTAINED A PROVISION - BINDING ON THE APPLICANT AND THE RESPONDENT - FOR RECOGNITION OF THE RESPONDENT AS EXCLUSIVE BARGAINING AGENT FOR EMPLOYEES OF THE APPLICANT. IT FOLLOWS THAT UNLESS IT IS SHOWN THAT THE RESPONDENT HAS AUTHORIZED THE UNITED BROTHERHOOD OR THE "PROVINCIAL COUNCIL" TO ENTER INTO THE PROVINCIAL AGREEMENT ON ITS BEHALF IT IS NOT BOUND BY THAT AGREEMENT. WITHOUT SUCH AUTHORIZATION BEING SHOWN. THE PROVINCIAL AGREEMENT WOULD NOT BE RELEVANT TO THE QUESTION OF THE LEGALITY OR OTHERWISE OF THE STRIKE WITH WHICH THIS APPLICATION IS CONCERNED. IN VIEW OF THE DISPOSITION WHICH THE BOARD MAKES OF THIS APPLICATION ON OTHER GROUNDS, IT IS NOT NECESSARY FOR US TO DETERMINE WHETHER IN FACT SUCH AUTHORIZATION WAS GIVEN. IT MAY BE NOTED, HOWEVER, THAT IN THE ABSENCE OF AUTHORIZATION OF THE UNITED BROTHERHOOD OR THE "PROVINCIAL COUNCIL" BY THE RESPONDENT TO BARGAIN ON ITS BEHALF, A QUESTION MAY ARISE AS TO THE PROPRIETY OF THE APPLICANT'S RECOGNITION OF THE "PROVINCIAL COUNCIL" AS EXCLUSIVE BARGAINING AGENT FOR ITS EMPLOYEES.

Counsel for the respondent further objected that the applicant had adduced no evidence to show that the respondent had called or authorized the strike of the applicant's employees which was admittedly taking place. The Board is of opinion that this objection is well taken. Although it is admitted that employees of the applicant are on strike and that employees of other employers in the construction industry in the Toronto area are on strike as well, these facts without more are not sufficient to support the conclusion that such strike, whether unlawful or not, was called or authorized by the respondent. No further evidence which would support such a conclusion was adduced.

THE APPLICATION ACCORDINGLY IS DISMISSED."

#### INDEXED ENDORSEMENT - PROSECUTION

10482-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. IRVING-CHARLES SUPERMARKETS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant argues that a written agreement entitled "Minutes of Settlement" made on the 23rd September, 1964, between it and the respondent and other related companies, whereby they all agreed to the settlement of certain matters in dispute between them, constitutes a collective agreement within the contemplation of section 1(1) (c) of the Labour Relations Act. It is alleged that the respondent later repudiated an unperformed portion of this agreement and that accordingly it has unilaterally and without the consent of the Labour Relations Board purported to terminate a collective agreement before that agreement has ceased to operate in accordance with its provisions contrary to section 39(3) of the Act.

THE TEXT OF THE MINUTES OF SETTLEMENT IS AS FOLLOWS:-

- 1. IRVING-CHARLES SUPERMARKETS LIMITED ACKNOWLEDGES RECEIPT FROM THE UNION OF NOTICE UNDER SECTION 47(A) OF THE LABOUR RELATIONS ACT AND FURTHER ACKNOWLEDGES THAT THE UNION IS THE COLLECTIVE BARGAINING AGENT OF ITS EMPLOYEES AT ITS STORE PREMISES KNOWN AS 245 RIDEAU STREET, OTTAWA. THE SAID COMPANY AGREES TO MEET REPRESENTATIVES OF THE UNION AND TO BARGAIN WITH THEM IN GOOD FAITH WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. IF NO COLLECTIVE AGREEMENT IS REACHED WITHIN A REASONABLE TIME OF COMMENCING NEGOTIATIONS NEITHER THE SAID COMPANY NOR THE UNION WILL OPPOSE THE OTHERS APPLICATION TO THE ONTARIO LABOUR RELATIONS BOARD FOR CONCILIATION SERVICES.
- 2. THE RATES OF PAY UNDER SUCH COLLECTIVE AGREEMENT SHALL BE THE SAME AS THOSE PAYABLE UNDER

THE NOW EXISTING COLLECTIVE AGREEMENT BETWEEN CENTRAL SUPERMARKETS LIMITED AND THE UNION. UPON A NEW COLLECTIVE AGREEMENT BEING CONCLUDED BETWEEN CENTRAL SUPERMARKETS LIMITED AND THE UNION SUCH RATES OF PAY SHALL BE ALTERED SO THAT THEY ARE EQUAL TO THE RATES OF PAY UNDER SUCH NEW AGREEMENT.

- 3. IRVING-CHARLES SUPERMARKETS LIMITED AGREES TO HIRE, ON A FULL-TIME BASIS NOT LATER THAN OCTOBER 12TH, 1964, FIVE PERSONS WHO WERE PREVIOUSLY EMPLOYED ON A FULL-TIME BASIS BY CENTRAL SUPERMARKETS LIMITED AND WHO WERE LAID OFF BY THAT COMPANY DUE TO ITS RECENT SALE OF THE SAID REDEAU STREET STORE PREMISES. THE UNION UNDERSTANDS THAT THE SAID RIDEAU STREET PREMISES WILL BE CLOSED SHORTLY FOR RENOVATIONS LASTING ABOUT THREE WEEKS.
- 4. THE PERSONS WHO WERE PREVIOUSLY EMPLOYED ON A PART-TIME BASIS BY CENTRAL SUPERMARKETS LIMITED AT THE SAID STORE PREMISES WILL BE OFFERED SIMILAR EMPLOYMENT BY IRVING-CHARLES SUPERMARKETS LIMITED AT THE SAME PREMISES AS AND WHEN THAT COMPANY REQUIRES PART-TIME EMPLOYEES.
- Shoppers City Limited and all other Respondents (except Central Supermarkets Limited and Irving-Charles Supermarkets Limited) will forthwith use their best efforts to employ or find employment for all persons other than those mentioned in paragraph 3 above, who were employed on a full-time basis by Central Supermarkets Limited (in positions comparable to the positions they held with Central Supermarkets Limited prior to August 1st, 1964) and who were laid off due to that Company's recent sale of the said store premises.
- 6. THE RESPONDENT IRVING-CHARLES SUPERMARKETS
  LIMITED AGREES THAT IT WILL TAKE NO FURTHER PROCEEDINGS
  IN THE ACTION IT HAS COMMENCED IN THE SUPREME COURT OF
  ONTARIO FOR AN INJUNCTION AND DAMAGES AGAINST CLIFFORD
  EVANS, DAVID A. WADE AND OTHERS. THE UNION AGREES
  THAT IT WILL FORTHWITH APPLY TO THE ONTARIO LABOUR
  RELATIONS BOARD FOR LEAVE TO WITHDRAW ALL THE PROCEEDINGS
  IT HAS COMMENCED UNDER THE LABOUR RELATIONS ACT AGAINST
  ANY OF THE RESPONDENTS AND THE UNION ALSO AGREES NOT TO
  COMMENCE ANY OTHER PROCEEDINGS AGAINST ANY OF THE
  RESPONDENTS WITH REGARD TO ANY MATTER OR THING ARISING
  PRIOR TO SEPTEMBER 23RD, 1964.
- 7. IN CONSIDERATION OF THE AGREEMENTS AFORESAID THE RESPONDENT CENTRAL SUPERMARKETS LIMITED AGREES TO PAY TO THE UNION FORTHWITH THE SUM OF \$2,000.00.

FOLLOWING THE EXECUTION OF THE MINUTES OF SETTLEMENT, A REQUEST BY THE APPLICANT FOR CONCILIATION SERVICES WAS GRANTED AND THE MATTER EVENTUALLY CAME BEFORE A CONCILIATION BOARD. THE POSITION TAKEN BY THE RESPONDENT BEFORE THE CONCILIATION BOARD WAS THAT THE COMPANY WAS WITHDRAWING FROM THE COMMITMENT GIVEN BY IT IN ARTICLE 2 OF THE MINUTES OF SETTLEMENT. ON OR ABOUT MAY 25, 1965, THE CONCILIATION BOARD RELEASED A REPORT RECOMMENDING THAT THE PARTIES CONTINUE NEGOTIATIONS WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. IF ANY NEGOTIATIONS HAVE, IN FACT, CONTINUED THEY HAVE NOT ACCORDING TO THE EVIDENCE, RESULTED IN THE EXECUTION OF A COLLECTIVE AGREEMENT.

Counsel for the applicant submits that articles 1, 2, 3 AND 4 OF THE MINUTES OF SETTLEMENT PLAINLY CONTAIN "TERMS OR CONDITIONS OF EMPLOYMENT" AND THAT IN CONSEQUENCE THE AGREEMENT FULFILS THE REQUIREMENTS OF A COLLECTIVE AGREEMENT AS DEFINED BY SECTION 1 (1) (c) OF THE ACT. HE SUBMITS THAT THE LEGAL EFFECT AND SUBSTANCE OF THE AGREEMENT MUST TAKE PRECEDENCE OVER ITS FORM AND THAT ACCORDINGLY NOTHING TURNS ON THE DESCRIPTION OF THE AGREEMENT AS "MINUTES OF SETTLEMENT" OR ON THE FACT THAT THE PARTIES BY EXPRESS PROVISIONS THEREIN CONTEMPLATE BARGAINING FOR AND THE EXECUTION OF A "COLLECTIVE AGREEMENT" IN THE FUTURE. HE CONTENDS THAT WHILE THE PARTIES MUST BE TAKEN TO HAVE INTENDED THAT THE PROVISIONS OF ARTICLE 2 AS TO THE AMOUNT OF WAGES PAYABLE WOULD NOT BE OPERATIVE UNLESS AND UNTIL A "COLLECTIVE AGREEMENT" WAS SIGNED BY THE PARTIES, THE ARTICLE DID CONSTITUTE A PRESENT AGREEMENT BINDING ON THE PARTIES AS TO THE AMOUNT OF WAGES WHICH WOULD BE PAID BY THE RESPONDENT IN THE EVENTUALITY OF AN AGREEMENT BEING REACHED BETWEEN THEM ON OTHER MATTERS. IN THIS SENSE, THERE-FORE, THERE IS, HE ARGUES, A PRESENT VALID COLLECTIVE AGREEMENT BETWEEN THEM RELATING TO THE TERMS OR CONDITIONS OF EMPLOYMENT WITH RESPECT TO THE WAGES WHICH THE PARTIES HAVE AGREED WILL BE IMPLE-MENTED UPON THE OCCURRENCE OF THE STATED EVENT IN THE FUTURE. FURTHER, HE ARGUES, THAT ARTICLES 3 AND 4 DEAL IMMEDIATELY WITH THE EMPLOYMENT OF CERTAIN PERSONS AND THAT, THEREFORE, THERE CAN BE NO QUESTION BUT THAT THE PROVISIONS OF THESE ARTICLES FALL WITHIN THE DEFINED SUBJECT MATTER OF A COLLECTIVE AGREEMENT UNDER THE ACT.

IN OUR VIEW, THE QUESTION AS TO WHETHER THE MINUTES OF SETTLEMENT CONSTITUTE A COLLECTIVE AGREEMENT AS CONTEMPLATED BY THE ACT MUST BE STUDIED BY REFERENCE TO THE NATURE AND TERMS OF THE AGREEMENT TAKEN AS A WHOLE AND TO THE INTENTION OF THE PARTIES AS EXHIBITED IN THE WRITTEN INSTRUMENT. THE FACT THAT A WRITTEN INSTRUMENT CONTAINS CERTAIN PROVISIONS RELATING TO TERMS OR CONDITIONS OF EMPLOYMENT DOES NOT NECESSARILY OF ITSELF CONFER UPON THE AGREEMENT THE STATUS OF A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT. IT SEEMS OBVIOUS THAT NOT EVERY AGREEMENT IN WRITING MADE BETWEEN A TRADE UNION, WHICH REPRESENTS EMPLOYEES IN A BARGAINING UNIT AND THEIR EMPLOYER, WHICH CONTAINS TERMS OR CONDITIONS AFFECTING THE EMPLOYMENT OF THOSE EMPLOYEES, CONSTITUTES THE KIND OF AN AGREEMENT ENVISAGED BY THE ACT AS A COLLECTIVE AGREEMENT (E.g. SETTLEMENTS OF UNFAIR PRACTICE COMPLAINTS UNDER SECTION 65 ETC.) IT IS PLAINLY ONE OF THE

DISTINGUISHING CHARACTERISTICS OF A COLLECTIVE AGREEMENT THAT AT LEAST SOME OF ITS CONTENTS RELATING TO "TERMS AND CONDITIONS OF EMPLOYMENT OR THE RIGHT. PRIVILEGES OR DUTIES OF THE EMPLOYER - - " CONTEMPLATE THAT THEY SHALL CONTINUE TO SUBSIST AND TO GOVERN AND TO REGULATE THESE MATTERS AND THE COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE PARTIES OVER A DEFINITE TERM OF OPERATION WHICH, BY VIRTUE OF SECTION 39 (1), IS FOR A MINIMUM PERIOD OF ONE YEAR. (SEE THE HOLLINGER CONSOLIDATED GOLD MINES LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, 1949-54 TRANSFER BINDER, ¶17,032; THE CROMAR CONSTRUCTION COMPANY CASE. IBID ¶17,082; AND THE HILL V. C.P.R. C.C.H. CANADIAN LABOUR LAW REPORTER, 1960-64 TRANSFER BINDER, ¶15,415; (1962) O.R.7.) IT IS OBVIOUS THAT THIS KIND OF AGREEMENT IS TO BE DISTINGUISHED FROM OTHER KINDS OF AGREEMENTS WHICH CALL FOR AND CONTEMPLATE AN IMMEDIATE AND COMPLETE PERFORMANCE OF ALL COVENANTS THEREUNDER. WHEREUPON THE PARTIES ARE DISCHARGED FROM ANY FURTHER OBLIGATION. THE AGREEMENT RELIED ON AS A COLLECTIVE AGREEMENT IN THE INSTANT CASE LACKS THE CONTINUING FEATURES OF THE FORMER TYPE OF AGREEMENT AND IS MORE IN THE NATURE OF AN AGREEMENT CONTAINING COVENANTS CALLING FOR IMMEDIATE AND COMPLETE PERFORMANCE RELEASING THE PARTIES FROM ANY FURTHER OBLIGATION THEREUNDER.

IN ORDER TO FIND THE DOCUMENT A COLLECTIVE AGREEMENT, THE OBJECTIVE PROVISIONS OF THE AGREEMENT ITSELF MUST BE CONSISTENT WITH AN INTENTION OF THE PARTIES THAT THE AGREEMENT, WHEN SIGNED SHALL BE AND BEAR ALL THE CONSEQUENCES TO THEM OF A COLLECTIVE AGREEMENT. IN OUR OPINION, THE LANGUAGE, TERMS AND SUBJECT—MATTER OF THE MINUTES OF SETTLEMENT IN THIS CASE ARE NOT ONLY INCONSITENT WITH BUT MANIFESTLY NEGATIVE ANY INTENTION OF THE PARTIES THAT IT WOULD CONSTITUTE A COLLECTIVE AGREEMENT. HAVING REGARD TO THE TERMS AND SUBJECT MATTER OF THE AGREEMENT, THE CONCLUSION IS INESCAPABLE THAT NEITHER OF THE PARTIES INTENDED IT TO BE ANYTHING OTHER THAN THE SETTLEMENT OF CERTAIN MATTERS IN DISPUTE, AND AS A BASIS FOR FURTHER NEGOTIATIONS WITH A VIEW TO THE ULTIMATE CONSUMMATION OF A COLLECTIVE AGREEMENT EMBODYING, INTER ALIA, A TERM IN ACCORDANCE WITH ARTICLE 2 RELATING TO THE AMOUNT OF WAGES PAYABLE BY THE EMPLOYER.

Apart from any other considerations which might be relevant in determining whether there is prima facie evidence of a violation of section 39(3) of the Act, there is not, in our opinion, any reasonably arguable question of law that the agreement is a collective agreement within the meaning of section 1(1)(c) of the Act. Whatever other remedy may be available to the applicant it has plainly failed to make out a case for consent to prosecute the respondent for a violation of section 39(3) of the Act.

THE APPLICATION IS ACCORDINGLY DISMISSED."

10455-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. S. A. ARMSTRONG LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a complaint for relief under section 65 of The Labour Relations Act

The complainant alleges that the aggrieved person Albert Frattura was suspended by the respondent for one week commencing May 28th, 1965, because he was a member of the complainant trade union and because he was exercising his right to bargain collectively with the respondent in contravention of section 50 (a) and (c) of the Labour Relations Act.

THE EVIDENCE IS THAT THREE EMPLOYEES OF THE RESPONDENT FORMED A PART OF THE COMPLAINANT UNION'S BARGAINING COMMITTEE.

FRATTURA WAS PRESIDENT OR HEAD OF THAT COMMITTEE. REPRESENTATIVES OF THE RESPONDENT MET WITH THE BARGAINING COMMITTEE AT THE RESPONDENT'S PREMISES ON O'CONNOR DRIVE IN TORONTO AT 10:00 A.M. ON MAY 18TH, FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT. ALTHOUGH THE EVIDENCE OF FRATTURA AND RICHARD FRY THE RESPONDENT'S PLANT SUPERINTENDENT, IS NOT ENTIRELY IN ACCORD, IT APPEARS THAT THE MEETING LASTED FOR APPROXIMATELY ONE HOUR. FRATTURA TESTIFIED THAT FOLLOWING THE MEETING THE BARGAINING COMMITTEE PROCEEDED TO THE OFFICES OF THE COMPLAINANT UNION WHERE FURTHER DISCUSSION AMONG THE MEMBERS CONTINUED FOR AN UNSPECIFIED PERIOD OF TIME. FRATTURA DID NOT REPORT FOR WORK DURING THE REMAINDER OF THE DAY, ALTHOUGH 7:30 A.M. TO 4:30 P.M. ARE HIS REGULAR WORKING HOURS.

On the following day, May 19th, Fry spoke to Frattura concerning his absence from work on the afternoon of May 18th, Frattura's evidence is that Fry asked him if he (Frattura) expected to be absent for the remainder of the day after every bargaining session. Frattura testified that he replied in the negative but told frattura that when there was a bargaining session in the morning he (Frattura) would be expected to report for work in the afternoon. Fry's evidence is that he told Frattura to so inform the other two employees on the bargaining committee.

A SECOND NEGOTIATION MEETING ATTENDED BY REPRESENTATIVES OF THE RESPONDENT AND THE UNION BARGAINING COMMITTEE TOOK PLACE AT A MOTEL IN THE OUTSKIRTS OF TORONTO COMMENCING AT 10:00 A.M. ON MAY 27TH. AGAIN IT APPEARS FROM THE EVIDENCE THAT THE MEETING CONCLUDED AT ABOUT 11:00 A.M. FRATTURA TESTIFIED THAT THE BARGAINING COMMITTEE AGAIN WENT TO THE UNION'S OFFICES IN TORONTO AND AT THAT TIME AN APPLICATION FOR CONCILIATION SERVICES WAS PREPARED. FRATTURA'S EVIDENCE IS THAT HE REMAINED AT THE UNION OFFICE UNTIL SOMETIME AFTER 3:00 P.M. FRATTURA DID NOT REPORT FOR WORK AT ANY TIME DURING THAT DAY.

On May 28th, Frattura received a memorandum from Fry Dated May 27th, which reads:

You are to be suspended from work
for a period of one week effective
May 28th, 1965. This is due to
your absence from work on the afternoon
of May 27th, 1965. You were warned that
action would be taken after a similar
absence on May 18th.
Any future absence without a reason
satisfactory to Management will result
in dismissal.

While there is no evidence that Fry informed Frattura that action would be taken if he absented himself again in the same manner as he did on May 18th, we accept Fry's evidence that he told Frattura that he (Frattura) was expected to return for work in the afternoon when there was a bargaining session in the morning. This statement, in effect, was a warning to Frattura and in our view he should reasonably have anticipated some form of disciplinary action if he failed to return to work.

THE COMPLAINANT ALLEGES THAT ONE OF THE REASONS FRATTURA COULD NOT REPORT FOR WORK ON THE AFTERNOONS OF MAY 18TH AND MAY 27TH, WAS THAT HIS HOME WAS IN AJAX AND HE HAD ATTENDED THE NEGOTIATION MEETINGS IN A BUSINESS SUIT AND DID NOT HAVE TIME TO RETURN TO AJAX TO CHANGE INTO HIS WORKING CLOTHES. WE DO NOT ACCEPT THIS EXPLANATION AS ANY JUSTIFICATION FOR HIS FAILURE TO RETURN TO WORK IN VIEW OF THE FACT THAT THE RESPONDENT PROVIDED CHANGING FACILITIES AND THE EVIDENCE IS THAT SOME EMPLOYEES REGULARLY REPORT FOR WORK IN STREET CLOTHES AND CHANGE TO THEIR WORK CLOTHES AT THE PLANT. WE CAN SEE NO REASON WHY FRATTURA COULD NOT HAVE BROUGHT HIS WORK CLOTHES WITH HIM WHEN HE ATTENDED THE NEGOTIATION MEETINGS AND MADE A CHANGE OF CLOTHES AT THE PLANT.

Counsel for the complainant referred to the evidence that James Hunter and the third employee of the bargaining committee had not reported on their shifts following either of the meetings on May 18th or May 27th and yet they had not been suspended. Counsel argued that this evidence reveals that the respondent singled out Frattura for disciplinary action because of his position as head of the union sargaining committee.

FRY TESTIFIED THAT SINCE HE HAD NOT SPOKEN TO THE OTHER TWO EMPLOYEES PERSONALLY FOLLOWING THE MAY 18TH MEETING, HE ONLY FELT JUSTIFIED IN ISSUING A WRITTEN WARNING TO HUNTER AND THE THIRD EMPLOYEE AS RESULT OF THEIR ABSENCE FOLLOWING THE MAY 27TH MEETING. WE FIND FRY'S EXPLANATION REASONABLE AND CONSISTENT WITH HIS CONDUCT.

IN REACHING OUR DETERMINATION IN THIS MATTER WE HAVE TAKEN INTO ACCOUNT THE FACT THAT THE RESPONDENT GRANTED THE THREE EMPLOYEES ON THE BARGAINING COMMITTEE PERMISSION TO BE ABSENT FROM WORK TO ATTEND THE NEGOTIATION MEETINGS. WE FIND IT SIGNIFICANT, HOWEVER, THAT ON NEITHER MAY 18TH NOR MAY 27TH, DID FRATTURA MAKE A REQUEST TO FRY OR ANY OTHER MEMBER OF MANAGEMENT FOR ADDITIONAL TIME OFF FROM HIS WORK TO ATTEND THE MEETINGS OF THE UNION BARGAINING COMMITTEE.

HAVING REGARD TO ALL THE EVIDENCE THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT THE RESPONDENT SUSPENDED FRATTURA FOR A PERIOD OF A WEEK BECAUSE OF HIS UNION ACTIVITIES IN CONTRAVENTION OF THE LABOUR RELATIONS ACT.

THE COMPLAINT IS ACCORDINGLY DISMISSED."

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

" | DISSENT.

IN MY OPINION THE EVIDENCE DOES NOT SUPPORT THE FINDING OF THE MAJORITY THAT FRY GAVE A WARNING TO FRATTURA FOR HIS FAILURE TO RETURN TO WORK ON THE AFTERNOON OF MAY 18TH FOLLOWING THE BARGAINING SESSION THAT MORNING. | THEREFORE FIND THAT THE STATEMENT IN FRY'S MEMORANDUM OF MAY 27TH TO FRATTURA THAT HE WAS "WARNED THAT ACTION WOULD BE TAKEN AFTER A SIMILAR ACTION ON MAY 18th" is not in accord with the true facts. Accordingly, | REJECT FRY S EXPLANATION THAT HE DID NOT SUSPEND THE OTHER TWO EMPLOYEES ON THE UNION BARGAINING COMMITTEE, ALTHOUGH THEY TOO HAD FAILED TO REPORT FOR WORK ON THE AFTERNOONS OF MAY 18TH AND 27TH BECAUSE HE. PERSONALLY, HAD NOT GIVEN THEM A WARNING CONCERNING THEIR ABSENCE ON MAY 18th. IN MY VIEW FRY SUSPENDED FRATTURA, WHO SIGNIFICANTLY IS CHAIRMAN OF THE UNION'S BARGAINING COMMITTEE, AS AN OBJECT LESSON TO THE OTHER EMPLOYEES, FOR THE PURPOSE OF WEAKENING THE UNION'S POSITION IN NEGOTIATIONS FOR A COLLECTIVE AGREEMENT WHICH WERE JUST COMMENCING WITH THE COMPANY."

#### INDEXED ENDORSEMENT - SECTION 79A

10300-65-M: THE UNITED STEELWORKERS OF AMERICA (TRADE UNION) V. GRENVILLE AGGREGATE SPECIALTIES LTD. (EMPLOYER).

On June 15, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference by the Minister of Labour pursuant to section 79A of the Question whether the trade union is entitled to give notice to bargain to the employer pursuant to section 47A of the Act.

The trade union was party to a collective agreement entered into on October 14th, 1963, between it and R. A. Jones carrying on business under the firm name and style of Madoc Marble Quarries Company. This agreement was to remain in effect until April 14th, 1965.

On November 1st, 1964, R. A. Jones sold the Business

IN QUESTION TO MADOC MARBLE QUARRIES LIMITED. THERE IS NO DOUBT THAT THIS WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION  $47\underline{a}$  of the Act.

ON DECEMBER 1st, 1964, MADOC MARBLE QUARRIES LIMITED SOLD ITS BUSINESS TO A PARTNERSHIP CONSISTING OF WILLIAM HOUSTON AND ANOTHER. THIS TRANSACTION, CONSIDERED BY ITSELF, WAS ALSO A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A.

On February 1st, 1965, the above mentioned partners sold the partnership business to Grenville Aggregate Specialties Ltd., the employer in this reference. Again this transaction, considered by itself, was a sale of a business within the meaning of section  $47\underline{a}_{\circ}$ 

The trade union gave notice purporting to be notice pursuant to section  $47\underline{a}$  of the Act to the employer on February 2nd, 1965. It is the propriety of this notice which is in issue.

FOLLOWING THE SALE NOTED IN PARAGRAPH 3 ABOVE, THE TRADE UNION WAS ENTITLED TO GIVE NOTICE PURSUANT TO SECTION 47A TO MADOC MARBLE QUARRIES LIMITED. NO SUCH NOTICE HAD BEEN GIVEN AT THE TIME OF THE SALE NOTICED IN PARAGRAPH 4. THE RIGHT OF A TRADE UNION TO GIVE NOTICE TO BARGAIN TO A SUCCESSOR EMPLOYER IS PROVIDED FOR UNDER SECTION 47A (2) OF THE ACT:-

WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11.

IN ORDER, THEREFORE, FOR THE TRADE UNION TO BE ENTITLED TO GIVE NOTICE TO THE EMPLOYER IN THE INSTANT CASE, IT MUST BE ESTABLISHED THAT THE EMPLOYER HAS ACQUIRED THE BUSINESS IN QUESTION FROM "AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREE—MENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40". IF THE RIGHT TO GIVE NOTICE UNDER SECTION 47A IS TO BE EQUATED WITH THE RIGHT TO GIVE NOTICE UNDER SECTION 11 OR SECTION 40, THEN THE TRADE UNION WAS ENTITLED TO GIVE NOTICE UNDER SECTION 47A TO THE PARTNERSHIP DESCRIBED IN PARAGRAPH 4, WHETHER OR NOT NOTICE HAD BEEN GIVEN TO MADOC MARBLE QUARRIES LIMITED. BY THE SAME TOKEN THE TRADE UNION WOULD BE ENTITLED TO GIVE NOTICE TO THE EMPLOYER IN THE INSTANT CASE. IT SHOULD BE NOTED THAT NO QUESTION OF

DELAY IN THE GIVING OF NOTICE ARISES IN THE INSTANT CASE.

THE QUESTION HERE IN ISSUE WAS DEALT WITH IN THE TRENTON RIVERSIDE DAIRY PRODUCTS CASE, (1964) 2 C.L.S. 76-1005 WHERE THE BOARD STATED AT P. 76-1009:-

IT IS CONSISTENT WITH BASIC PRINCIPLES OF STATUTORY CONSTRUCTION THAT THE MEANING TO BE ASCRIBED TO THOSE PARTS OF THE SECTION IN QUESTION CANNOT BE FOUND IN A LITERAL CONSTRUCTION OF EACH PART TAKEN IN ALIEN JUXTAPOSITION FROM THE SECTION AND ACT AS A WHOLE. THE TRUE MEANING OF THE SECTION AND ITS INDIVIDUAL PARTS MUST BE DEDUCED FROM THE AGGREGATE OF ALL THE PARTS IN CONTEXT WITH THE SECTION AND ACT AS A WHOLE. IN OUR OPINION, THE MOST COGENT AND REASONABLE INTERPRETATION CONSISTENT WITH THE LANGUAGE AND OBJECTIVE OF THE SECTION AND ACT AS A WHOLE, IS THAT, FOR PURPOSES OF SECTION 47A(2), THE GIVING OF NOTICE AND THE RIGHT TO DO SO, UNDER THAT SECTION, IS THE SAME AS GIVING NOTICE OR THE RIGHT TO DO SO UNDER SECTION 11. IN OTHER WORDS, THE GIVING OF NOTICE OR THE RIGHT TO GIVE NOTICE UNDER SECTION 47a(2) TO A FIRST PURCHASER MUST MEAN, FOR PURPOSES OF SECTION 47a(2), THAT THE FIRST PURCHASER IS AN EMPLOYER ON BEHALF OF WHOSE EMPLOYEES THE TRADE UNION HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11. ASSUMING THE PROOF OF THE FACTS ALLEGED, THERE IS NO QUESTION IN OUR MIND THAT THE BARGAINING RIGHTS OF THE UNION CONTINUE UNDER SECTION 47A(2) FOR THE EMPLOYEES OF THE SECOND PURCHASER.

This conclusion applies with equal force to subsequent purchasers. It follows that the trade union was entitled to give notice under section 47a(2) not only to Madoc Marble Quarries Limited but also to the partnership which continued the business from December 1st, 1964 to February 1st, 1965 and also to the Employer in this application, Grenville Aggregate Specialties Ltd.

THE BARGAINING UNIT OF EMPLOYEES OF R. A. JONES CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF MADOC MARBLE QUARRIES COMPANY FOR WHOM THE TRADE UNION WAS BARGAINING AGENT CONSISTED OF ALL EMPLOYEES OF THAT COMPANY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD. THE BOARD FINDS THAT THIS DESCRIPTION DEFINES THE LIKE BARGAINING UNIT OF THE EMPLOYEES OF THE EMPLOYER. THE EVIDENCE ESTABLISHES THAT THERE HAS BEEN INTERMINGLING WITHIN THE BARGAINING UNIT OF EMPLOYEES OF THE BUSINESS IN QUESTION WITH EMPLOYEES OF ANOTHER BUSINESS PURCHASED BY THE EMPLOYER. THE BOARD, THEREFORE, IN THE EXERCISE OF ITS DESCRETION UNDER SECTION 47A (5) OF THE ACT AND HAVING IN MIND THE CIRCUMSTANCES OF THE INSTANT CASE ONLY, DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF GRENVILLE AGGREGATE SPECIALTIES LTD.

RESULT OF VOTE AS FOLLOWS:-

Number of names on revised voters' List 12

Number of Ballots cast 12

Number of Ballots marked in 7

Favour of Trade Union 7

Number of Ballots marked against Trade Union 5

ON JULY 15, 1965 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY
THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE
ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE TRADE UNION.

ON THE QUESTION REFERRED TO THE BOARD, THE BOARD FINDS
THAT THE TRADE UNION IS ENTITLED TO GIVE NOTICE TO BARGAIN TO
THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT."

#### ADDENDUM

#### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10262-65-R: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. ARMSTRONG BROS. COMPANY LIMITED (RESPONDENT) (GRANTED MAY 1965).

THE APPLICANT IN THIS CASE WAS CERTIFIED BY THE BOARD ON MAY 20, 1965.

On May 27, 1965, THE RESPONDENT, BY LETTER, REQUESTED THE BOARD TO RECONSIDER ITS DECISION ON THE GROUND THAT:

- 1. "A VITAL PORTION OF THE DECISION IS BASED A MISTATEMENT OF FACT;
- 2. THE BOARD MADE CRITICAL ERRORS IN PROCEDURE; AND
- 3. THE BOARD FAILED TO DISCHARGE ITS BASIC OBLIGATION UNDER THE LABOUR RELATIONS ACT."

THE BOARD'S DECISION, WHICH WAS RENDERED ON JUNE 22, 1965 AND WHICH SHOULD HAVE APPEARED IN THE JUNE MONTHLY REPORT, IS AS FOLLOWS:-

"WE HAVE CAREFULLY CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE THREE SEPARATE GROUNDS ADVANCED IN SUPPORT OF THE REQUEST.

AS TO THE FIRST GROUND, THE RESPONDENT APPEARS TO BE UNDER SOME MISAPPREHENSION AS TO THE NATURE AND EFFECT OF THE Board's decision. The Board's note that the parties are in AGREEMENT THAT THE BARGAINING UNIT DOES NOT COVER SHOP OR YARD EMPLOYEES OR EMPLOYEES WORKING IN SAND OR GRAVEL PITS IS NOT, IN OUR VIEW, A MISSTATEMENT OF FACT. OUR NOTES SHOW THAT AT THE HEARING COUNSEL FOR THE RESPONDENT RAISED THE QUESTION OF SAND AND GRAVEL PITS AND COUNSEL FOR THE APPLICANT REPLIED THAT THE APPLICANT WAS NOT CLAIMING THEM. OUR NOTES ALSO REVEAL THAT THE PARTIES WERE IN AGREEMENT THAT "SHOP AND YARD EMPLOYEES" WERE NOT TO BE INCLUDED. WHILE THE RESPONDENT MAY HAVE BEEN TAKING THE POSITION THAT SAND AND GRAVEL PITS DO NOT FALL WITHIN THE CONSTRUCTION SECTIONS OF THE ACT AND WHILE THE APPLICANT MAY HAVE AGREED TO THEIR EXCLUSION FOR SOME OTHER REASON, THE FACT IS THE PARTIES WERE IN AGREEMENT ON THIS POINT. TO SET OUT THIS AGREE-MENT SO THAT THERE WOULD BE NO DOUBT ABOUT THE MATTER, THE BOARD EMPLOYED ITS USUAL TERMINOLOGY OF EMPLOYEES WORKING IN SUCH LOCATIONS. THIS TERMINOLOGY IS EMPLOYED BECAUSE OF THE LANGUAGE USED IN DESCRIBING THE BARGAINING UNIT, THAT IS, "A UNIT OF EMPLOYEES". THIS IS THE INVARIABLE PRACTICE OF THE BOARD AND ONE DEMANDED BY THE LEGISLATION. SEE SECTIONS 6 AND 7 OF THE LABOUR RELATIONS ACT.

Thus, IT IS CLEAR THAT THE BARGAINING UNIT DOES NOT COVER THE CONSTRUCTION LABOURERS WHILE WORKING AT THESE LOCATIONS AND THERE IS NO QUESTION IN OUR MINDS BUT THAT WE HAVE "POSITIVELY DETERMINED THE DESCRIPTION OF THE UNIT" TO USE THE WORDS OF THE RESPONDENT.

Our notes do not in fact show that at the hearing the question of "crushed stone" operations was raised. If during the negotiation for a collective agreement any question arises with respect to construction labourers employed in these particular operations, either party may apply to the Board for clarification under the provisions of section 79(1) of the Act.

FINALLY, ON THIS GRAOUND WE ARE UNABLE TO UNDERSTAND THE REFERENCE TO "NOT WITHIN THE POWER OF THE BOARD (AS CONSTITUTED) TO RECOGNIZE". THE BOARD WAS SIMPLY NOTING THE FACT OF AGREEMENT. IN SO DOING, IT WAS NOT MAKING ANY DECISION ONE WAY OR THE OTHER AS TO WHETHER THE EMPLOYEES AGREED TO BE EXCLUDED WOULD OR WOULD NOT FALL UNDER THE CONSTRUCTION PROVISIONS OF THE ACT. THE AGREEMENT OF THE PARTIES NEGATED THE NECESSITY OF THE BOARD MAKING ANY DECISION ON THIS POINT.

THE SECOND AND THIRD GROUNDS SUBMITTED IN SUPPORT OF THE RESPONDENT'S REQUEST, IF WE UNDERSTAND THEM CORRECTLY, CAN BE CONVENIENTLY DEALT WITH TOGETHER.

IN THE FIRST PLACE, THERE IS NO ESSENTIAL DIFFERENCE BETWEEN THE UNIT APPLIED FOR AND THE UNIT WHICH THE BOARD FOUND

TO BE APPROPRIATE. IN ESSENCE, THE APPLICANT WAS SEEKING CONSTRUCTION LABOURERS IN WHAT IT TERMED "HEAVY CONSTRUCTION". THIS IS IN FACT THE UNIT WHICH THE BOARD FOUND TO BE APPROPRIATE, ALTHOUGH DESCRIBED IN DIFFERENT TERMS - THAT IS, (IN ACCORDANCE WITH A RECENT DECISION OF THE BOARD) IN TERMS OF ALL CONSTRUCTION LABOURERS SAVE AND EXCEPT CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS. THE EXCLUSIONS PROPOSED, NAMELY SHOP AND YARD EMPLOYEES, SECURITY GUARDS, CLERICAL AND ENGINEERING STAFF AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN ARE CLEARLY EXCEPTED FROM THE BOARD'S UNIT. SECURITY GUARDS ARE AUTOMATICALLY EXCLUDED BY THE ACT (SEE SECTION 10). CLERICAL AND ENGINEERING STAFF DO NOT FALL UNDER THE TERM "CONSTRUCTION LABOURERS". WHILE THE RESPONDENT DOES NOT APPARENTLY AGREE WITH THE EXCLUSION OF NON-WORKING FOREMAN, THIS IS A STANDARD EXCLUSION BOTH IN BOARD UNITS AND IN NUMEROUS COLLECTIVE AGREEMENTS IN THE INDUSTRY.

While the applicant, as required by Form 54, paragraph 5, Named the construction sites affected by the application, it is clear from the unit proposed that it was seeking certification for the area described in paragraph 6 of Form 54. This was the area found to be appropriate — the Board, after considering the representations of the parties, finding no reason to depart from the area bargaining practice in the construction industry which has been followed in many Board decisions.

AS WE READ THE ARGUMENTS OF THE RESPONDENT, ITS MAIN CONCERN APPEARS TO BE THAT IN DETERMINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD FAILED TO COUNT "REGULAR" EMPLOYEES WHICH, THE RESPONDENT SAYS, WERE EMPLOYEES WHO WOULD FALL INTO THE BARGAINING UNIT FOUND TO BE APPROPRIATE BUT WHO WERE AT WORK IN THE YARD ON THE DATE IN QUESTION AND THEREFORE EXLUDED FOR PURPOSES OF THE COUNT. IN ADDITION OR ALTERNATIVELY, THE RESPONDENT WOULD ALSO APPEAR TO BE SUBMITTING THAT THE BOARD FAILED TO HAVE REGARD FOR FUTURE "BUILD-UP" OF EMPLOYEES. THESE WERE MATTERS WHICH WERE RAISED, FULLY ARGUED BY THE PARTIES AND DEALT WITH IN THE BOARD'S DECISION.

HAD THE BOARD REACHED A DIFFERENT DECISION, IT WOULD HAVE REQUIRED FURTHER INFORMATION RESPECTING THESE EMPLOYEES.

SINCE IT CAME TO A DIFFERENT CONCLUSION, FURTHER INFORMATION WAS UNNECESSARY.

WE AGREE WITH COUNSEL FOR THE APPLICANT THAT IN ESSENCE NO NEW MATTERS OR EVIDENCE ARE RAISED IN THE SECOND AND THIRD SUBMISSIONS OF THE RESPONDENT. WITH REFERENCE TO SECTION 96(1), ATTENTION IS DIRECTED TO THE DECISION OF THE BOARD IN BALL BROTHERS LTD., O.L.R.B. MONTHLY REPORT, JANUARY, 1963, p. 432. WHILE THE DECISION IN THAT CASE DEALT WITH THE AREA PROBLEM, IN PRINCIPLE, THE SAME CONSIDERATIONS APPLY IN THE CASE OF BUILD-UP.

HAVING REGARD TO THE ABOVE CONSIDERATIONS, AND IN ALL THE CIRCUMSTANCES OF THIS CASE, WE DO NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE OUR DECISION IN THIS MATTER DATED MAY 20TH, 1965."

#### STATISTICAL TABLES FOR JULY 1965

APPLICATIONS AND COMPLAINTS FILED WITH THE
ONTARIO LABOUR RELATIONS BOARD

			Number filed		
		JULY 1965	1st 4 MTHs. 0 1965-66	FISCAL YR. 1964-65	
1	0				
'	CERTIFICATION	79	359	284	
11	DECLARATION TERMINATING BARGAINING RIGHTS	4	23	30	
111	DECLARATION OF SUCCESSOR STATUS	na.	5	1	
1 V	Declaration That Strike Unlawful	3	25	16	
V	DECLARATION THAT LOCK- OUT UNLAWFUL	_	-	3	
V١	CONSENT TO PROSECUTE	6	25	32	
VII	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	6	47	38	
IIIV	MISCELLANEOUS	5	24	6	
	TOTAL	103	<u>508</u>	410	

TABLE 11

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		Number		
	JULY 1965	1st 4 Mths. 0 1965-66		
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	125	466	378	

#### TABLE III

# APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

			NUMBER DISPOS	ED OF
		JULY 1965	lst 4 MTHs. 1965-66	of Fiscal Yr. 1964-65
ı	CERTIFICATION	89	370	280
11	Declaration Terminating Bargaining Rights	3	21	. 34
111	Declaration of Successor Status	1	9	4
1 V	Declaration That Strike Unlawful	4	21	14
V	Declaration That Lock- Out Unlawful	-	_	2
VI	CONSENT TO PROSECUTE	5	17	20
V11	Complaint of Unfair Practice in Employment (Section 65)	12	48	48
VIII	MISCELLANEOUS	3	41	7
	· Total	117	<u>527</u>	409

TABLE IV

### APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION

		JULY 1965	UMBER OF AP 1ST 4 MTHS. 1965-66	PLICATIONS FISCAL YR. 1964-65	N July 1965	UMBER OF EM 1ST 4 MTHS. 1965-66	PLOYEES* FISCAL YR. 1964-65
1	CERTIFICATION						
	GRANTED Dismissed Withdrawn	62 18 9	276 68 26	197 55 28	1238 127 1194	8002 2736 2432	7321 3663 1175
	TOTAL	<u>89</u>	<u>370</u>	280	2559	13170	12159
П	TERMINATION OF BARGAINING RIGHTS						
	GRANTED Dismissed Withdrawn	3 -	8 11 2	20 12 2	639	726 - 232 - 73	246 269 82
	TOTAL	3	_21	34	639	1031	597

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY
AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE
BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR
CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR
APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

### APPLICATIONS DISPOSED OF BY THE ONATARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

		Number of applications			
	JULY 1965	1st 4 Mths. 1965-66	OF FISCAL YR		
III DECLARATION THAT STRIKE UNLAWFUL					
Granted Dismissed Withdrawn	1 3 -	6 3 12	8 3 3		
TOTAL	. 4	21	14		
IV DECLARATION THAT LOCKOUT UNLAWFUL					
Granted Dismissed Withdrawn	-	-	- 1 1		
TOTAL	=	Colonian Colonian	2		
V CONSENT TO PROSECUTE					
Granted Dismissed Withdrawn	1 4	1 3 13	2 3 15		
TOTAL	_5	17	20		

#### TABLE V

## REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

CERTIFICATION AFTER VOTE*	July 1965	Number of V 1st 4 Mths. 1965-66	
PRE-HEARING VOTE POST-HEARING VOTE BALLOTS NOT COUNTED	1 3 -	9 12 -	9 8 -
DISMISSED AFTER VOTE			
PRE-HEARING VOTE POST-HEARING VOTE BALLOTS NOT COUNTED	2 5 1	3 11 2	4 23 —
TOTAL	12	37	44

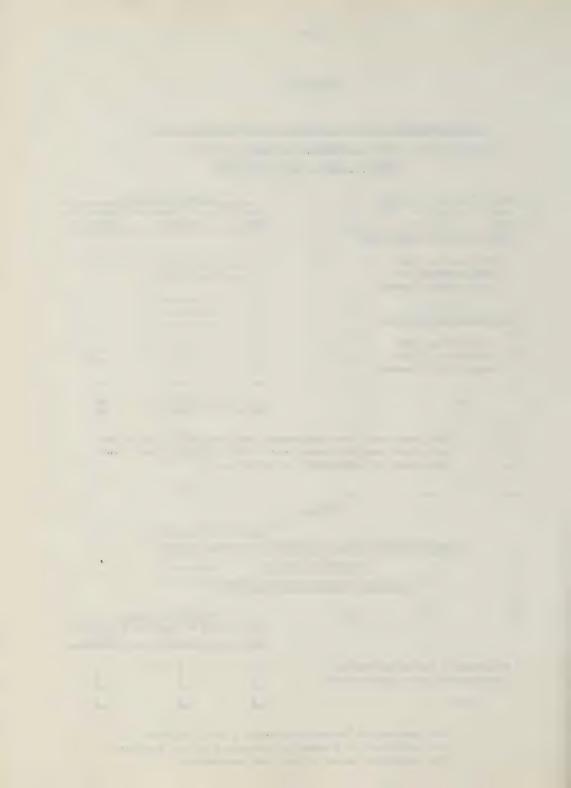
<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

#### TABLE VI

## REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER OF VO	TES
	JULY 1965	lsт 4 Мтн <b>s</b> . о 1965-66	F FISCAL YR. 1964-65
*Respondent Union Successful Respondent Union Unsuccessful	<del>-</del>	1	-
ON THE ON THE ONG OF CESSFOL	2		_6
TOTAL	_3	<u>9</u>	_6

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN
THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER;
THE INVUMBENT UNION IS THUS THE RESPONDENT.





### ONTARIO LABOUR RELATIONS BOARD



#### CASE LISTINGS AUGUST 1905

7	CERTIFICATION		1 AGE
1.	(A) BARGAINING (B) APPLICATIO	AGENTS CERTIFIED NS DISMISSED NS WITHDRAWN	315 328 335
2.	Applications for Bargaining Righ	Declaration Terminating	336
3.	Applications for Unlawful	DECLARATION THAT STRIKE	337
4.	APPLICATIONS FOR	CONSENT TO PROSECUTE	337
5.	Complaints Under Labour Practice	SECTION 65 (UNFAIR	338
6.	APPLICATION UNDER	R SECTION 47A	342
7.	REFERENCES TO THE SECTION 79A	BOARD PURSUANT TO	343
8.	Application for (Section 79(2)	DETERMINATION UNDER	343
9.	Applications for Board's Decision	RECONSIDERATION OF	343
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#### APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### DURING AUGUST 1965

#### BARGAINING AGENTS CERTIFIED DURING AUGUST

No Vote Conducted

10052-64-R: Office Employees International Union Local 131 AFL-CIO (Applicant) v. Pickford and Black Limited (Respondent).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT OFFICE MANAGER AND THOSE ABOVE THE RANK OF OFFICE MANAGER." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 345 ).

10450-65-R: United Textile Workers of America Local 462 (Applicant) v. Lanark Mills Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN SMITHS FALLS, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 356 ).

10460-65-R: United Steelworkers of America (Applicant) v. Beaverton Specialties Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BEAVERTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 360 ).

10492-65-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. UNION GAS COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN ITS WESTERN REGION SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CORROSION AND GAS MEASUREMENT TECHNICIANS, CREDIT MANAGER, ASSISTANT CREDIT MANAGER, HOME SERVICE ADVISOR, HOME ECONOMISTS, RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND SPECIAL SALES REPRESENTATIVES, CASUAL EMPLOYEES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (69 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CHIEF DISPATCHER IS INCLUDED IN THE BARGAINING UNIT AND THAT CASUAL EMPLOYEES MEANS ALL PERSONS WHO ARE NOT REGULARLY EMPLOYED FOR MORE THAN 4 MONTHS IN ANY TWELVE MONTH PERIOD.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE AGREEMENT AND WRITTEN REPRESENTATIONS OF THE PARTIES, THE BOARD AMENDS THE DESCRIPTION OF THE BARGAINING UNIT AS CONTAINED IN THE BOARD'S CERTIFICATE OF AUGUST 5TH, 1965, BY ADDING AT THE END THEREOF THE FOLLOWING ADDITIONAL EXCLUSION:-

"AND SECRETARIES EMPLOYED IN A CONFIDENTIAL CAPACITY"."

10556-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ROTOR ELECTRIC COMPANY (RESPONDENT) v. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (166 EMPLOYEES IN THE UNIT

(SEE INDEXED ENDORSEMENT PAGE 365 ).

10602-65-R: Local Union 636 of the International Brotherhood of Electrical Workes A.F.L.-C.I.O.-C.L.C. (Applicant) v. Security & Investigation Services Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ELECTRICAL PROTECTION SERVICE AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 367 ).

10616-65-R: UNITED PACKINGHOUSE FOOD & ALLIED WORKERS (APPLICANT) v. CANADA VINEGARS LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND SEASONAL EMPLOYEES."

(40 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"There was filed with the Board a statement of desire (Hereinafter referred to as the petition) expressing opposition to this
application. John Hache an employee of the respondent who identified
all twenty-one signatures appearing on the petition testified that he
first learned of the union's application for certification from a
Telephone call from a fellow employee on Sunday, July 11th, 1965.
His evidence is that he went to the respondent's premises at approximately 9:00 a.m. on Monday, July 12th even though it was his day off.

HE ENTERED THE PLANT AND READ THE BOARD'S NOTICE TO THE EMPLOYEES WHICH HAD BEEN POSTED. HACHE STATED THAT HE THEN WENT TO THE RESPONDENT'S PARKING AREA WHERE HE MET THE EMPLOYEE WHO HAD TELEPHONED HIM THE PREVIOUS DAY. HIS EVIDENCE IS THAT THE OTHER EMPLOYEE THEREUPON WROTE THE HEADING ON THE PETITION IN HACHE'S PRESENCE AND HACHE THEN TOOK THE PETITION FROM HIM AND ENTERED THE PLANT. HE ORIGINALLY TESTIFIED THAT HE SECURED ALL BUT FOUR OF THE SIGNATURES ON THE PETITION IN THE LUNCH ROOM DURING THE TWO HALF HOUR LUNCH BREAKS FROM 11:30 A.M. TO 12:30 P.M. ON THE SAME DAY. HE SAID THAT HE SECURED TWO SIGNATURES IN THE PLANT IN THE EARLY AFTERNOON AND THE REMAINING TWO SIGNATURES AT THE HOMES OF THE EMPLOYEES IN THE EARLY EVEN-ING. UPON FURTHER QUESTIONING HACHE CHANGED HIS TESTIMONY AND STATED THAT HE SECURED FIVE SIGNATURES IN THE PLANT AT APPROMIMATELY 11:00 A.M. HIS EVIDENCE IS THAT NO MEMBERS OF MANAGEMENT WERE PRESENT IN THE LUNCH ROOM OR IN THE PLANT AT THE TIMES THAT HE SECURED SIGNATURES ON THE PETITION. HE FURTHER TESTIFIED THAT HE WANDERED AROUND THE PLANT FROM APPROXIMATELY 9:30 A.M. TO 2:30 P.M. AT WHICH TIME HE LEFT THE COMPANY S PREMISES RETURNING AT APPROXI-MATELY 8:00 P.M. THAT EVENING TO PICK UP HIS AUTOMOBILE. HACHE'S EVIDENCE IS THAT ON THAT OCCASION HE DID NOT ENTER THE PLANT AND DID NOT SOLICIT ANY SIGNATURES FOR THE PETITION

The evidence of Joe Passerino a fellow employee is that on the evening of July 12th at approximately 8:00 p.m. he was approached in the plant by hache who asked him whether he wanted to sign the petition against the union. Passerino also testified that he saw hache in the lunch room during the half hour break at 7:30 p.m. talking to an employee about the petition. Passerino said that the foreman in charge of the vinegar line who he identified as "Red" was in the lunch room at the time. In giving evidence in reply to the testimony of Passerino hache said that he did not recall approaching Passerino to sign the petition.

The petition is written on a lined sheet of foolscap. The signatures appear in two orderly columns with fifteen signatures in the left hand column and six signatures in the right hand column. The signatures are placed on the lines one directly below the other. Hache identified the ninth and fourteenth signatures in the left hand column as being the signatures he secured in the plant in the early afternoon after the lunch period of July 12th. He also identified the eleventh and twelfth signatures in the left hand column as being the signatures he secured in the early evening at the homes of the employees. He further identified the first five of the six signatures in the right hand column as being the signatures he secured in the plant at approximately 11:00 a.m. prior to the lunch period.

IN GIVING HIS EVIDENCE HACHE ALTERED HIS ORIGINAL TESTIMONY AS TO THE TIME AND PLACE IN WHICH HE SECURED SIGNATURES ON THE PETITION. WHILE IT MAY BE THAT HACHE HAD SOME GENUINE DIFFICULTY IN CLEARLY RECOLLECTING EVENTS THAT OCCURRED SOME EIGHT DAYS PRIOR TO THE BOARD HEARING ON JULY 20TH, WE FIND THAT HIS EVIDENCE RELATING TO THE SECURING OF SIGNATURES FROM THE EMPLOYEES IN THE PLANT AND AT THEIR HOMES, WHICH HE CONFIRMED A NUMBER OF TIMES, IS WHOLLY INCOMPATIBLE WITH THE ORDER IN WHICH THE SIGNATURES APPEAR ON THE PETITION. HAVING REGARD TO THE APPEARANCE OF THE PETITION, WE DO NOT ACCEPT HIS EXPLANATION FOR THE ORDER IN WHICH THE SIGNATURES APPEAR, NAMELY, THAT THE EMPLOYEES SIGNED ANYWHERE ON THE DOCUMENT IN NO PARTICULAR ORDER. THERE IS ALSO THE CONFLICT BETWEEN HACHE'S EVIDENCE AND THAT OF PASSERING WITH REGARD TO THE SOLICITING OF SIGNATURES ON THE PETITION IN THE PLANT ON THE EVENING OF JULY 12TH. AS BETWEEN THE TESTIMONY OF HACHE AND PASSERING WE ACCEPT THE TESTIMONY OF PASSERING. HAVING REGARD TO ALL THE EVIDENCE WE DO NOT FIND HACHE TO BE A CREDIBLE WITNESS. ACCORDINGLY. THE BOARD IS NOT PREPARED TO HOLD THAT THE PETITION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"I DISSENT.

IN APPLICATIONS FOR CERTIFICATION, THE PRIMARY PURPOSE OF THE BOARD'S ENGUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION FILED IN OPPOSITION TO THE APPLICATION IS TO ASCERTAIN IF IT REPRESENTS THE VOLUNTARY WISHES OF THE EMPLOYEES WHO SIGNED IT AND THAT THE EMPLOYER DID NOT PARTICIPATE IN ITS ORIGINATION, PREPARATION OR CIRCULATION OR GIVE IMPROPER SUPPORT TO IT.

IN THE INSTANT CASE, THERE IS NO EVIDENCE BEFORE THE
BOARD THAT THE PETITION WAS NOT VOLUNTARILY SIGNED BY THE
EMPLOYEES OR THAT IT DID NOT REPRESENT THEIR TRUE WISHES. THERE
IS NO EVIDENCE WHATSOEVER OF EMPLOYER PARTICIPATION IN SUPPORT.
OF THE PETITION NOR DID THE APPLICANT UNION MAKE ANY CHARGES
ALLEGING SUCH PARTICIPATION OR SUPPORT.

JOHN HACHE, AN EMPLOYEE OF THE RESPONDENT, GAVE EVIDENCE UNDER OATH CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION. HE STATED THAT HE WITNESSED ALL TWENTY-ONE SIGNATURES APPEARING ON THE PETITION. HE MAY HAVE BECOME SOMEWHAT CONFUSED AS TO THE ORDER AND AT WHAT TIME AND PLACE HE SECURED EACH AND EVERY SIGNATURE OF THE OTHER EMPLOYEES. THIS IS NOT TO BE WONDERED AT IN VIEW OF THE FACT THAT HE WAS QUESTIONED IN DETAIL AND AT LENGTH BY THE CHAIRMAN OF THE PANEL. INSTEAD OF IT BEING AN EXAMINATION IN CHIEF IT DEVELOPED INTO CROSS-EXAMINATION. IN ADDITION, HE WAS CROSS-EXAMINED BY COUNSEL FOR THE APPLICANT UNION WHOSE SOLE PURPOSE, OF COURSE, WAS TO DESTROY THE VALUE OF THE

PETITION. HACHE WAS NOT REPRESENTED BY COUNSEL AND CONSEQUENTLY WAS AT A DISTINCT DISADVANTAGE THROUGHOUT THE HEARING.

I AM NOT PREPARED TO FIND THAT HACHE IS NOT A CREDITABLE WITNESS. ON THE CONTRARY I WAS NOT AT ALL IMPRESSED BY THE DEMEANOUR OF THE EVIDENCE GIVEN BY JOE PASSERINO, A WITNESS CALLED BY THE APPLICANT UNION TO REFUTE CERTAIN EVIDENCE GIVEN BY HACHE.

IN ALL THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE ORDERED A REPRESENTATION VOTE SO THAT THE EMPLOYEES COULD INDICATE THEIR TRUE WISHES BY SECRET BALLOT. THE EMPLOYEES WOULD BE ASKED IF THEY WISHED TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"THE MAJORITY HAS HAD AN OPPORTUNITY OF READING THE DIS-SENTING OPINION OF BOARD MEMBER H.F. IRWIN AND WOULD MAKE THE FOLLOW-ING OBSERVATIONS. BOARD MEMBER IRWIN SEEMS TO SUGGEST THAT THE BOARD CONDUCTED AN UNDULY EXTENSIVE EXAMINATION OF HACHE WHO APPEARED IN SUPPORT OF THE PETITION. WE WOULD POINT OUT THAT DURING THE COURSE OF THE BOARD'S EXAMINATION OF HACHE THERE WERE MANY CHANGES AND DISCREPANCIES IN HIS EVIDENCE. ACCORDINGLY, IT WAS NECESSARY FOR THE BOARD TO MAKE A DETAILED INQUIRY IN ORDER TO SECURE SOME CLARIFICATION OF HIS TESTIMONY. COUNSEL FOR THE APPLICANT CALLED PASSERINO TO GIVE EVIDENCE FOR THE PURPOSE OF ATTACKING THE CREDI-BILITY OF HACHE. HACHE WAS GIVEN THE OPPORTUNITY BY THE BOARD TO REPLY TO THE EVIDENCE OF PASSERING. HACHE WAS ADVISED BY THE BOARD, HOWEVER, THAT IF HE CHOSE TO GIVE THE REPLY EVIDENCE HE WOULD BE SUBJECT TO CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT. HACHE CHOSE TO GIVE REPLY EVIDENCE AND COUNSEL FOR THE APPLICANT WAS THEREUPON GIVEN AN OPPORTUNITY AND DID CROSS-EXAMINE HIM."

10635-65-R: American Federation of Grain Millers International Union, AFL-CIO, CLC (APPLICANT) v. Thomas J. Lipton Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD DATED MARCH 31ST, 1964." (115 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT LABORATORY PERSONNEL ARE NOT INCLUDED IN THE BARGAINING UNIT.

For purposes of clarity the Board declared that a named employee who is classified as matron does not exercise managerial functions within the meaning of section 1(3)(B) of The Labour Relations Act and is included in the bargaining unit.

10650-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. LIFE SAVERS LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT HAMILTON." (3 EMPLOYEES IN THE UNIT).

10657-65-R: United Brotherhood of Carpenters and Joiners of America Local 1669 (Applicant) v. Geo. E. Knowles Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT ALL CARPENTERS AND CARPENTERS APPRENTICES EMPLOYED IN THE SHOP OF THE RESPONDENT ARE NOT INCCUDED IN THE BARGAINING UNIT.

THE BOARD IS NOT FAVOURABLY DISPOSED TO THE AREA PROPOSED BY THE APPLICATION WHILE IT APPEARS INEVITABLE THAT A NEW AREA WILL HAVE TO BE DETERMINED IN NORTH-EASTERN ONTARIO IN THE NEAR FUTURE, THE BOARD IS NOT PREPARED AT THIS TIME TO FINALIZE THE BOUNDARIES.

10659-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. CHISHOLM'S (ROSLI) LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TYENDINAGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENT EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES WHILE THEY ARE WORKING IN THE FEED MILL AND SEED CLEANING MILL." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

 $\frac{10662-65-R}{\text{Local }7^{49}}\text{ (Applicant) }v\text{. Ontario Plant Foods Limited (Respondent).}$ 

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT FOREMEN, PERSON ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

10664-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CREDIT VALLEY CONSERVATION AUTHORITY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ACTON, AMARANTH TOWNSHIP, CALEDON TOWNSHIP, CHINGUACOUSY TOWNSHIP, ERIN TOWNSHIP, ESQUESING TOWNSHIP, GARAFRAXA EAS TOWNSHIP, GEORGETOWN, MONO TOWNSHIP, PORT CREDIT, STREETSVILLE, TORONTO TOWNSHIP, OAKVILLE, (FORMERLY TRAFALGAR TOWNSHIP), SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10670-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Allen Industries Canada Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT HAMILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, LABORATORY STAFF, TIMEKEEPERS, DRAFTSMEN, PLANT NURSES AND WATCHMEN."

(86 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE PARTIES ARE IN AGREEMENT AS TO THE PERSONS WHO ARE INCLUDED IN THE BARGAINING UNIT. THE UNIT AS JOINTLY PROPOSED BY THE PARTIES IS DESCRIBED IN THE FOLLOWING TERMS:

ALL EMPLOYEES OF THE COMPANY AT ITS
PLANT IN HAMILTON, ONTARIO SAVE AND
EXCEPT: ASSISTANT FOREMEN AND FORELADIES,
FOREMEN AND FORELADIES, ASSISTANT SUPERINTENDENTS, SUPERINTENDENTS, OFFICE STAFF,
CLERICAL STAFF BOTH IN PLANT AND OFFICE,
ENGINEERING AND PROFESSIONAL STAFF,
LABORATORY STAFF, TIMEKEEPERS, DRAFTSMEN,
FIRST AID NURSES, PLANT SECURITY GUARDS,
WATCHMEN, SALES STAFF, PERSONNEL DEPARTMENT,
AND ALL SUPERVISORY PERSONNEL AND ALL CONFIDENTIAL PERSONNEL.

THE ABOVE DESCRIPTION DOES NOT CONFORM WITH THE PRACTICES THAT THE BOARD HAS FOLLOWED IN DESCRIBING BARGAINING UNITS. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT HAMILTON, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, LABORATORY STAFF, TIMEKEEPERS, DRAFTSMEN, PLANT NURSES AND WATCHMEN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

The Board notes the agreement of the parties that clerical staff located in both the office and the plant are not included in the bargaining unit.  $^{\rm II}$ 

10671-65-R: Building Service Employees' International Union, Local No. 204, AFL-CIO-CLC (Applicant) v. Royal Victoria Hospital of Barrie (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (167 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD FURTHER DECLARED THAT CERTIFIED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

10673-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 597 (APPLICANT) v. META TULLY, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF TULLY CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10674-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. REFRIGERATION CERTIFIED MAINTENANCE Co. Ltd. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 365 BAY STREET IN TORONTO." (5) EMPLOYEES IN THE UNIT).

10675-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Budd Machine Tool Company Limite (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANTS IN THE TOWNSHIP OF SANDWICH EAST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (38 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"WE ARE NOT PERSUADED ON THE GROUNDS ARGUED BY THE RESPONDENT THAT THERE IS ANY TENABLE BASIS FOR FINDING THAT THE COMPANY'S EMPLOYEES IN ITS TOOL AND DIE DIVISION AND ITS METAL TREATING DIVISION, WHICH ARE LOCATED IN ADJACENT BUT SEPARATE BUILDINGS, DO NOT CONSTITUTE A SINGLE APPROPRIATE BARGAINING UNIT. IN OUR OPINION, THE FACTS DO NOT ESTABLISH SUCH A DISPARITY OF INTEREST AMONG THE EMPLOYEES IN THE TWO DIVISIONS OR ANY OTHER FACTORS REFERABLE TO THE OPERATION OR LOCATION OF THE DIVISIONS WHICH WOULD WARRANT THE CONCLUSION THAT IT WOULD BE INAPPROPRIATE TO INCLUDE THE EMPLOYEES OF BOTH DIVISIONS IN A SINGLE UNIT."

10679-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT COCHRANE, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, AND THE DOMINION STORES LIMITED." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10681-65-R: International Brotherhood of Teamsters, Warehousemen and Helpers, Local 938, General Truck Drivers (Applicant) v. Graham Transport Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AURORA, SAVE AND EXCEPT FOREMEN,
DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN OR DISPATCHER, OFFICE AND SALES STAY
AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(22 EMPLOYEES IN THE UNIT).

10685-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 493 (APPLICANT) v. HILL-CLARK-FRANCES LTD. (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10697-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) v. NATIONAL WELDING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT SMOOTH ROCK FALLS IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10702-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Alga Investments Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10703-65-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE SUDBURY PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL STUDENTS EMPLOYED BY THE RESPONDENT DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

10711-65-R: GENERAL TRUCK DRIVERS, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. GARDEN PARK CATERING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

10712-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union 837 (Applicant) v. Born W. Contracting Hamilton Ltd. (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10713-65-R: GENERAL TRUCK DRIVERS LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. AGNEW-SURPASS SHOE STORES LTD. (RESPONDENT).

Unit: "ALL WAREHOUSE EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT
ASSISTANT WAREHOUSE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT WAREHOUSE MANAGER,

office and sales staff, students employed for school vacation period and persons regularly employed for not more than 24 hours per week." (29 employees in the uni

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10723-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. HELMUT STOCKMAN (RESPONDENT).

10725-65-R: Brotherhood of Painters, Decorators and Paperhangers of America, Local Union 1891 (Applicant) v. J. Antflek Painting Contractor (Respondent).

UNIT: "ALL PAINTERS AND PAINTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITH A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

10726-65-R: GENERAL TRUCK DRIVERS LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. PREMIER BUILDING MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT'S READY-MIX OPERATIONS AT STONEY CREEK, SAY AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

10728-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Belanger Construction Limited (Respondent).

<u>Unit</u>: "ALL carpenters and carpenters' apprentices in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

10729-65-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. B. Leslie Real Estate & Development Co. Ltd. (Respondent)

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10732-65-R: Local Union 636 of The International Brotherhood of Electrical Workers A.F. of L. C.I.O., C.L.C. (Applicant) v. TR Services Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

10733-65-R: Local 280 of the Hotel & Restaurant Employees and Bartenders International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Eastwood Park Hotel Limited 3701 Lakeshore Blvd., West, Long Branch, Toronto 14 (Respondent).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT ITS EASTWOOD PARK HOTEL IN LONG BRANCH, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (16 EMPLOYEES IN THE UNIT).

10734-65-R: United Steelworkers of America (Applicant) v. Herb. Fraser & Associates Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

10735-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 786 (APPLICANT) v. THE RALPH M. PARSONS CONSTRUCTION COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10741-65-R: Local Union # 1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. J. A. MacDonald Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF THE TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF THE WATERLOO-WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10743-65-R: PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION #1891 (APPLICANT) v. M. OLMER (RESPONDENT).

Unit: "ALL painters and painters! apprentices in the employ of the respondent within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

10744-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Dube Construction (Sudbury) Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10749-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Mac Isaac Mining & Tunneling Co. Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

10760-65-R: International Hod Carriers Building and Common Labourers Union of America (Applicant) v. S. McNally & Sons Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF THE TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF THE WATERLOOWELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD NO. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

10764-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Ralph M. Parsons Construction Company of Canada, Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF FIFTY MILES FROM THE TIMMINS FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"In this case the respondent The Ralph M. Parsons Construction Company of Canada, Limited alleges in its reply that it has a collective agreement with the applicant. More specifically, the respondent says that it has recognized the applicant as the bargaining agent for the employees affected by this application and has agreed to abide by the existing local agreement. In support thereof the respondent has filed an agreement between The Ralph M. Parsons Company (not the present respondent) and the international Union of Operating Engineers effective June 29, 1962, an unsigned copy of an agreement bearing the name of one party only, namely the international Union of Operating Engineers, Local 793, and a copy of a letter dated June 18, 1965 addressed to Operating Engineers Union Local #793 and signed by the respondent company.

THE FIRST MENTIONED DOCUMENT HAS OBVIOUSLY NO APPLICATION TO THIS CASE SINCE IT IS NOT BETWEEN THE PARTIES

TO THIS APPLICATION AND IN ANY EVENT IT IS LIMITED IN SCOPE TO THE BOUNDARIES OF THE UNITED STATES. THE SECOND DOCUMENT REFERRED TO HAS NO LEGAL EFFECT WHATSOEVER UNLESS IT CAN BE SAID IT IS THE "CRAFT LOCAL LABOUR AGREEMENT" REACHED BETWEEN THE APPLICANT UNION AND THE "BONA-FIDE CONTRACTORS NEGOTIATING COMMITTEE" AS TO WHICH THERE IS NO EVIDENCE WHATSOEVER BEFORE US. THE THIRD DOCUMENT, NAMELY THE LETTER, DOES NOT BY ITSELF CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. SEE CANADA MACHINERY CORPORATION CASE, (1961) 61 C.L.L.C. \$16,194, C.L.S. 76-729. THERE IS NO EVIDENCE WHATSOEVER THAT THE APPLICANT UNION ACKNOWLEDGED THIS LETTER OR IN ANY WAY SIGNED ANYTHING FROM WHICH IT MIGHT BE INFERRED THAT A COLLECTIVE AGREEMENT EXISTS BETWEEN THE PARTIES. IT IS NOTED THAT THE RESPONDENT DID NOT REQUEST A HEARING IN THIS CASE BUT STATED IN ITS REPLY THAT IT CONSENTED TO THE APPLICATION BEING DISPOSED OF BY THE BOARD WITHOUT A HEARING, ALTHOUGH MAKING WRITTEN REPRESENTATIONS AS SET OUT ABOVE."

### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10522-65-R: United Electrical, Radio and Machine Workers of America (UE)
(Applicant) v. Canadian General Electric Company Limited (Scarborough Plant)
(RESPONDENT) v. United Steelworkers of America (Intervener).

#### - AND -

10524-65-R: United Steelworkers of America (Applicant) v. Canadian General Electric Company Limited (Scarborough Plant) (Respondent) v. United Electrical, Radio and Machine Workers of America (UE) (Intervener).

### (THE ABOVE APPLICATIONS ARE CONSOLIDATED)

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SCARBOROUGH PLANT (1900 EGLINTON AVENUE EAST) SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (169 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST		169
NUMBER OF BALLOTS CAST		166
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
United Electrical, Radio and Machine		
WORKERS OF AMERICA (UE)	111	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
United SteeLworkers of America	54	

(SEE INDEXED ENDORSEMENT PAGE 361 ).

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

#### No VOTE CONDUCTED

10331-65-R: THE BRICKLAYERS' AND MASONS' UNION LOCAL No. 1 (APPLICANT) v. PRE-CON MURRAY LIMITED (RESPONDENT) v. 1.H.C., B & C.L.U. of A., LOCAL 506 (INTERVENER). (2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant applied for certification on Form 54,
Application for Certification, Construction Industry. In due
course the matter was listed for hearing and a hearing took
place, following which an Examiner was appointed to inquire
into the composition of the bargaining unit.

FOLLOWING THE SECOND MEETING WHICH THE EXAMINER HAD WITH THE PARTIES, THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE HELD IMMEDIATELY IN VIEW OF THE FACT THAT THE BUILDING PROJECT INVOLVED WOULD BE COMPLETED SHORTLY.

AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THIS REQUEST. WE HAVE COME TO THE CONCLUSION THAT IT MUST BE REJECTED. RULE 67, SUBSECTION 1 STATES QUITE CLEARLY THAT WHERE AN APPLICANT DESIRES A PRE-HEARING REPRESENTATION VOTE, THE APPLICATION SHALL BE MADE IN FORM I AND NOT IN FORM 54. ONE OF THE OBJECTS OF A PRE-HEARING VOTE IS TO TAKE CARE OF THE SITUATION WHICH PRESENTS ITSELF IN THIS CASE. HOWEVER. THE APPLICANT CHOSE NOT TO MAKE SUCH AN APPLICATION, ALTHOUGH IT MUST HAVE REALIZED THAT IF ITS APPLICATION WAS SUCCESSFUL. IT WOULD INEVITABLY RESULT IN A REPRESENTATION VOTE BEING DIRECTED BY THE BOARD. WE ARE OF OPINION THAT WE CANNOT AT THIS STAGE OF THE PROCEEDINGS DIRECT THAT A PRE-HEARING REPRESENTATION VOTE BE HELD. FURTHERMORE, IT IS CLEAR THAT AT THE PRESENT STAGE OF THE PROCEEDINGS, THE BOARD IS UNABLE TO DIRECT A VOTE UNDER THE PROVISIONS OF SECTION 7, SUBSECTION 2 OF THE LABOUR RELATIONS ACT.

THE REQUEST IS ACCORDINGLY DENIED."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"The first question to be decided in this case is the status of Joseph Wilhelm. Assuming for present purposes that we are dealing with a craft bargaining unit the normal exclusion is non-working foremen and persons above that rank. Put in another way, working foremen are usually included in such units. However as in the case of the exclusion of foremen in industrial units this is a policy based on long experience that persons so designated i.e. non-working foremen in craft units and foremen in industrial units normally exercise managerial functions while

WORKING FOREMEN IN CRAFT UNITS AND PERSONS BELOW THE RANK OF FOREMEN IN INDUSTRIAL UNITS EG. ASSISTANT FOREMEN, NORMALLY DO NOT EXERCISE SUCH FUNCTIONS. ON OCCASION HOWEVER THE BOARD HAS EXCLUDED ASSISTANT FOREMEN IN INDUSTRIAL UNITS AND SO-CALLED WORKING FOREMEN IN CRAFT UNITS BECAUSE IN THE PARTICULAR CASE THE BOARD HAS FOUND THAT THE INDIVIDUAL CONCERNED EXERCISED MANAGERIAL FUNCTIONS. IN ALL CASES THEREFORE THE QUESTION ALWAYS IS DOES A PERSON EXERCISE MANAGERIAL FUNCTIONS BECAUSE AS POINTED OUT BY COUNSEL FOR THE RESPONDENT THIS IS THE SOLE QUESTION BEFORE THE BOARD UNDER SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. MOREOVER WE ARE UNABLE TO AGREE WITH THE SUB-MISSION OF COUNSEL FOR THE APPLICANT THAT THIS IS A QUESTION WHICH SHOULD BE RAISED UNDER SECTION 79. WHILE THAT MAY BE SO IN A PROPER CASE THE BOARD IS OFTEN CALLED UPON TO MAKE SUCH DECISIONS IN CASES LIKE THE PRESENT ONE -- THAT IS IN CERTIFI-CATION PROCEEDINGS.

IN THE PRESENT CASE IT IS CLEAR THAT WILHELM IS
CLASSIFIED AS AND IS REGARDED BY ALL AS A FOREMAN. IT IS ALSO
CLEAR THAT HE DOES PHYSICAL WORK ALTHOUGH, LOOKING AT ALL THE
EVIDENCE IT IS NOT ENTIRELY CLEAR JUST WHAT PROPORTION OF HIS
TIME HE SPENDS DOING SUCH WORK. BE THAT AS IT MAY THE EVIDENCE
IN OUR VIEW JUSTIFIES THE INFERENCE THAT WHETHER OR NOT ENGAGED
IN PHYSICAL WORK HE SPENDS THE GREATER MAJORITY OF HIS TIME IN
ACTIVE SUPERVISION OF THE MEN ON THE JOB INCLUDING LABOURERS,
MASONS, CARPENTERS AND ENGINEERS.

IN THE ABSENCE OF GREALIS, THE JOB SUPERINTENDENT, (AND HE MAY BE ABSENT TWO OR THREE DAYS A WEEK) HE IS IN COMPLETE CHARGE OF THE PROJECT AND REPRESENTS THE RESPONDENT COMPANY ON MATTERS RELATING TO THE PROJECT. HE DECIDES WHENEVER MEN ARE NECESSARY FOR THE JOB AND HE HAS HIRED MEN AND LAID MEN OFF WITHOUT CONSULTING ANYONE. HE HAS REPRIMANDED THE MEN, GRANTED TIME OFF, AND DECIDED IF OVERTIME IS NECESSARY. HE HAS THE AUTHORITY TO FIRE, AT ALL EVENTS IN THE ABSENCE OF GREALIS. HE INSTRUCTS THE MEN AND ASSIGNS THEM TO THEIR WORK. HE ISSUES THE TOOLS TO THE MEN FROM A BOX THE KEY TO WHICH IS IN HIS POSSESSION. WHILE IT IS TRUE THAT HE IS PAID AN HOURLY RATE AND THAT RATE IS THE TORONTO MASONS! RATE, HE IS USUALLY EMPLOYED TWELVE MONTHS OF THE YEAR AND THIS BECAUSE OF HIS POSITION AS FOREMAN.

IN ADDITION TO THE ABOVE WILHELM IS RESPONSIBLE FOR WORKING OUT THE BUDGET AND COST ARRANGEMENTS AND HE IS RESPONSIBLE TO HEAD OFFICE FOR WORKING WITHIN SUCH ARRANGEMENTS. HE HAS DISCUSSIONS AND CONFERENCES WITH SUPERINTENDENTS OF OTHER TRADES ON THE PROJECT AND WITH THE JOB SUPERINTENDENT FOR THE GENERAL CONTRACTOR. THE LATTER CONSIDERS WILHELM HAS AUTHORITY TO MAKE COMMITTMENTS WITH HIM ON BEHALF OF THE RESPONDENT COMPANY WITH RESPECT TO ITS WORK ON THE PROJECT.

AFTER CONSIDERING ALL THE EVIDENCE WE ARE SATISFIED THAT WILHELM POSSESSES FAR MORE AUTHORITY THAN THAT NORMALLY EXERCISED

BY WORKING FOREMEN WHOM THE BOARD WOULD INCLUDE IN A CRAFT BARGAINING UNIT AND FURTHER THAT HE IN FACT EXERCISES MANAGERIAL AUTHORITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WILHELM WOULD THEREFORE BE EXCLUDED FROM ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE.

ASSUMING, BUT WITHOUT DECIDING, THAT THE UNIT PROPOSED BY THE APPLICANT IS AN APPROPRIATE UNIT, WITH WILHELM EXCLUDED, THERE WOULD BE ONLY ONE PERSON IN THE UNIT. IT IS CLEAR THAT THE APPLICANT WOULD HAVE AS MEMBERS LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN ANY OTHER UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE.

IN THESE CIRCUMSTANCES THE APPLICATION MUST BE AND IS HEREBY DISMISSED.  $^{\prime\prime}$ 

10487-65-R: Local 2759 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Weyerhaeuser Canada Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATION IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, COOKS, SCALERS, CLERKS AND OFFICE STAFF." (25 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10571-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, Local Union No. 647, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Blenheim Dairy Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BLENHEIM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND DAIRY BAR EMPLOYEES."
(16 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATIFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

 $\frac{10576-65-R}{America}$ : International Hod Carriers' Building & Common Labourers' Union of America, Local 1059 (Applicant) v. Framat Construction Limited (Respondent).

Unit: "ALL construction Labourers in the EMPLOY of the RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(10 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Although the Applicant has requested leave of the Board to withdraw its application herein, the Board, follow-ing its usual practice in such cases, dismisses the application."

10601-65-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. NORTHLAND TIMBER COMPANY LIMITED (RESPONDENT). (58 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"At the meeting of the parties convened by the Examiner on July 25th, 1965, the applicant requested leave of the Board to withdraw its application.

HAVING REGARD TO THE STAGE OF THE PROCEEDINGS AT WHICH THE REQUEST WAS MADE, THE BOARD FOLLOWING ITS USUAL PRACTICE IN SUCH CASES DISMISSES THE APPLICATION."

10665-65-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT)

v. CANADA GUNITE Co. (RESPONDENT). (5 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant failed to file with the Board Form 60, Declaration Concerning Membership Documents, Construction Industry, within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. In accordance with its usual practice the application is therefore dismissed."

10668-65-R: Local Union # 1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. J. A. MacDonald Limited (Respondent). (4 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT AT THE HEARING THIS APPLICATION IS DISMISSED."

10693-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) v. METCALFE REALTY COMPANY LIMITED (RESPONDENT) v. CANADIAN CONSTRUCTION WORKERS' UNION DIVISION No. 1, N.C.C.L. (INTERVENER). (43-EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The evidence before the Board is that the intervener has held the bargaining rights for all employees of the respondent (with certain exceptions that are not here material) since November 1961. The respondent and the intervener are

CURRENTLY BOUND BY A COLLECTIVE AGREEMENT EFFECTIVE FROM JUNE 15th, 1965 to April 30th, 1967.

THE BOARD FINDS THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS APPLYING FOR CERTIFICATION ARE ALREADY REPRESENTED BY THE INTERVENER AND ARE COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER REFERRED TO ABOVE.

THE BOARD THEREFORE FINDS THAT THIS APPLICATION IS UNTIMELY.

THE APPLICATION ACCORDINGLY IS DISMISSED."

10704-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. LOBLAW GROCETERIAS CO., LIMITED (RESPONDENT). (45 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT APPLIES FOR THE UNIT OF PART-TIME EMPLOYEES. THE APPLICANT UNION, HOWEVER, WAS CERTIFIED AS BARGAIN-ING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY ON FEBRUARY 2ND, 1954. THERE IS CURRENTLY IN EFFECT A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RES-PONDENT WITH RESPECT TO FULL TIME EMPLOYEES AT SUDBURY. ALTHOUGH THERE IS NO COLLECTIVE AGREEMENT COVERING PART-TIME EMPLOYEES IT IS AGREED BY THE PARTIES THAT THE APPLICANT REMAINS BARGAINING AGENT FOR THEM AND THAT IT HAS NOT ABANDONED ITS BARGAINING RIGHTS. SINCE THE APPLICANT IS THEREFORE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT CLAIMED TO BE APPRO-PRIATE, THE BOARD HAS NO JURISDICTION UNDER SECTION 5(1)OF THE ACT TO ENTERTAIN THIS APPLICATION. THE APPLICA-TION IS ACCORDINGLY DISMISSED."

10714-65-R: Brotherhood of Painters, Decorators and Paperhangers of America, Ottawa Local 200 (Applicant) v. Riddell Bros. Ltd. (Respondent). (25 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"According to the respondent's reply and the SCHEDULES OF EMPLOYEES FILED THEREWITH, THERE WERE NO EMPLOYEES EMPLOYED BY THE RESPONDENT ON JULY 30TH, 1965, THE DATE OF THE APPLICATION. MOREOVER, ACCORDING TO THE SCHEDULES, THE PERSONS WHO HAD BEEN EMPLOYED BY THE RESPONDENT WERE LAID OFF ON JULY 29TH, WITH NO EXPECTED DATE OF RETURN.

IN THE CIRCUMSTANCES AND HAVING REGARD TO THE REPRESENTATIONS MADE ON BEHALF OF THE APPLICANT, THIS APPLICATION IS DISMISSED."

10718-65-R: Brotherhood of Painters, Decorators and Paperhangers of America, Ottawa Local Union 200 (Applicant) v. Lauzon Bros. 1240 Henry St. Cornwall Onto (Respondent). (4 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE BEFORE THE BOARD DOES NOT ESTABLISH THAT THE APPLICANT HAS AS MEMBERS AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES IN ANY BARGAINING UNIT WHICH THE BOARD WOULD FIND APPROPRIATE AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

ACCORDINGLY THE APPLICATION IS DISMISSED."

10722-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. ATLAS STEELS COMPANY LIMITED (RESPONDENT) v. CANADIAN STEELWORKER'S UNION, ATLAS DIVISION (INTERVENER). (29 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 367 ).

10742-65-R: THE WHYTE EMPLOYEES ASSOCIATION (APPLICANT) V. WHYTE PACKING COMPANY DIVISION OF COPACO (RESPONDENT). (117 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 369 ).

10750-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA LOCAL 837 (APPLICANT) v. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT). (23 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS CASE THE APPLICANT IS SEEKING AN AREA CONSISTING OF THE COUNTIES OF HALTON, WATERLOO AND WELLINGTON. THE JOB SITE AFFECTED BY THE APPLICATION IS SITUATED ON HIGHWAY #25 AT THE SOUTHERN LIMITS OF THE TOWN OF MILTON. THE RESPONDENT HAS INFORMED THE BOARD AND THE APPLICANT AGREES THAT A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COVERS THE EMPLOYEES AFFECTED BY THIS APPLICATION.

SINCE THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE WORKING ON A JOB SITE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT, THE APPLICANT ALREADY HAS BARGAINING RIGHT FOR THOSE EMPLOYEES AND CAN NOT, IN OUR VIEW, SEEK TO ENLARGE ON THOSE BARGAINING RIGHTS IN THE PRESENT APPLICATION, PARTICULARLY WHERE THERE ARE NO EMPLOYEES IN THE NEW AREA INVOLVED. IN THE RESULT, THEREFORE, THE APPLICATION MUST BE DISMISSED.

WE WOULD POINT OUT THAT, IN ANY EVENT, THE APPLICANT WHICH DID NOT REQUEST A HEARING, HAS FILED NO EVIDENCE WITH THE BOARD SUBSTANTIATING ITS CLAIM TO THE

WIDER AREA. REFERENCE IS MADE TO THE KEYSTONE CONTRACTORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1964, P. 266.

THE APPLICATION IS DISMISSED. 11

### DISMISSED SUBSEQUENT TO POST-HEARING VOTE

2170-64-R: Hotel, Restaurant, Bartenders' International Union, Local 442, Niagara Falls, Ontario (Applicant) v. Hoco Limited carrying on Business as Park Motor Hotel (Respondent).

IN A MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES IT WAS AGREED THAT THERE SHOULD BE TWO BARGAINING UNITS, ONE OF WHICH WAS REPORTED IN THE ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, NOVEMBER 1964, p. 359 AND THE OTHER TO COMPRISE:

"ALL STUDENTS EMPLOYED BY THE RESPONDENT AT THE PARK MOTOR HOTEL, NIAGARA FALLS DURING SCHOOL VACATION PERIODS".

IT WAS ALSO AGREED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES DESCRIBED ABOVE ON A DATE TO BE SET BY THE REGISTRAR AFTER JULY 1ST. 1965.

THE RESULT OF THE VOTE IS AS FOLLOWS:-

Number of names on revised voters' List	52
NUMBER OF BALLOTS CAST	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	7

10525-65-R: United Steelworkers of America (Applicant) v. Cooey Metal Products Limited (Respondent).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT BRIGHTON, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER." (8 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST		8
NUMBER OF BALLOTS CAST	3.	8
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

10629-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT)
v. Puritan Dairy Products Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNNVILLE, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, MILK BAR EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of Names on Revised Voters' List 27

Number of Ballots Cast 27

Number of Ballots Marked in Favour 13

Number of Ballots Marked against 44

### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

6826-63-R: United Brotherhood of Carpenters & Joiners of America Local Union 1487 Affiliated with the Carpenters District Council of Toronto and Vicinity (Applicant) v. C. A. Pitts General Contractor Ltd. (Respondent) v. International Union of Operating Engineers Local 793 (Intervener) v. International Hod Carriers Building and Common Labourers Union of America, Local #506 (Intervener) v. International Hod Carriers Building and Common Labourers Union of America, Local Union #183 (Intervener). (49 Employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Having regard to the representations of the parties made at the hearing held on August 16th, 1965, Leave is granted to withdraw the application for certification, and the intervener's application for certification."

7304-63-R: United Brotherhood of Carpenters & Joiners of America, Local Union 1487, Affiliated with the Carpenters District Council of Toronto and Vicinity (Applicant) v. Bermingham Construction Limited General Contractor (Respondent). (4 employees).

7595-63-R: International Hod Carriers Building & Common Labourers Union of America, Local #837 (Applicant) v. Western Pile and Foundation (Ontario) Ltd. (Respondent) v. United Brotherhood of Carpenters & Joiners of America, Local 18 (Intervener) v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Intervener). (19 employees).

10164-64-R: Wood, Wire and Metal Lathers International Union, Local 97 (Applicant) v. Pacific Lathing & Insulation (Respondent). (5 employees).

10171-64-R: Wood, Wire and Metal Lathers International Union, Local 97 (Applicant.)
v. Marel Contractors (Respondent). (20 employees).

10350-65-R: Local Union 353, International Brotherhood of Electrical Workers, (Applicant) v. Electrocomfort Corporation Limited (Respondent). (3 employees).

10593-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL TRONWORKERS. LOCAL UNION 721 (APPLICANT) V. GIFFIN SHEET METAL LTD. (RESPONDENT) v. SHEET METAL WORKERS! INTERNATIONAL ASSOCIATION, LOCAL UNION #233 (INTERVENER). (3 EMPLOYEES).

10694-65-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. G. A. BAERT CONSTRUCTION (1964) LTD. (RESPONDENT). (15 EMPLOYEES).

10719-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) v. PETER E. SYLVESTER & SONS LTD. (RESPONDENT). (5 EMPLOYEES).

10724-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RED STAR CHEESE COMPANY (RESPONDENT). (7 EMPLOYEES).

10736-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. COUNTY OF LAMBTON (RESPONDENT). (39 EMPLOYEES).

10758-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (APPLICANT) v. STONE AND WEBSTER, CANADA LIMITED (RESPONDENT). (7 EMPLOYEES).

### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING AUGUST

10407-65-R: EIKO KORVEMAKER (APPLICANT) V. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA (UAW) (RESPONDENT). (GRANTED). (21 EMPLOYEES).

(RE: DOMINION SINKS LIMITED, PETROLIA, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS? LIST	21
NUMBER OF BALLOTS SPOILED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
of Respondent	6
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	14

(SEE INDEX ENDORSEMENT PAGE 370 ).

10459-65-R: LAWRENCE ELSWORTH OSMENT (APPLICANT) V. LOCAL UNION NO. 837 CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (GRANTED). (287 EMPLOYEES).

(RE: KITCHENER-WATERLOO HOSPITAL, KITCHENER, ONTARIO).

> NUMBER OF NAMES ON REVISED VOTERS LIST 287 284 NUMBER OF BALLOTS CAST NUMBER OF BALLOTS MARKED IN FAVOUR 29 OF RESPONDENT NUMBER OF BALLOTS MARKED AGAINST 255

RESPONDENT

10619-65-R: THE JOHN INGLIS CO. LIMITED (APPLICANT) V. THE ASSOCIATION OF ENGINEERING DRAFTSMEN AND TECHNICAL ASSOCIATES (RESPONDENT). (DISMISSED). (6 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"No one appearing for the applicant, the application is dismissed."

10628-65-R: THE CAPITAL EMPLOYEE ASSOCIATION (APPLICANT) v. THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT) v. IRVING-CHARLES SUPERMARKETS LIMITED (INTERVENER). (64 EMPLOYEES).

(Re: Irving-Charles Supermarkets Limited, Ottawa, Ontario).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant in a telegram to the Board of July 30th, 1965 has requested leave to withdraw its application. In accordance with the Board's usual practice, this application is dismissed."

### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING AUGUST

10695-65-U: S. H. Myles and Company Limited (Applicant) v. International Brotherhood of Electrical Workers, Local Union 120 (Respondent). (WITHDRAWN).

10699-65-U: S. H. MYLES AND COMPANY LIMITED (APPLICANT) V. KENNETH M. FISHER ET AL (RESPONDENTS). (WITHDRAWN).

10737-65-U: ALDERLEA SERVICES LIMITED (APPLICANT) v. J. FELICKS ET AL (RESPONDENTS). (WITHDRAWN).

## APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

10561-65-U: CANADIAN GENERAL ELECTRIC COMPANY, LIMITED (APPLICANT) v. J. A. ALEXANDER ET AL (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 371 ).

10573-65-U: United Steelworkers of America (Applicant) v. S. A. Armstrong Limited (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 372 ).

10633-65-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. FRANK CIARMELA ET AL (RESPONDENTS). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

That the said respondents did contravene section 54 of the Labour Relations Act in that being employees bound by a collective agreement and while the collective agreement was in operation they did engage in a strike commencing on or about June 14th, 1965 and continuing from day to day thereafter until on or about July 27th, 1965."

10690-65-U: INTERNATIONAL JEWELLERY WORKERS' UNION LOCAL 33, TORONTO (APPLICANT) V. LIBMAN & Co. (RESPONDENT). (WITHDRAWN).

10700-65-U: S. H. Myles and Company Limited (Applicant) v. W. R. C. Lang (RESPONDENT). (WITHDRAWN).

10701-65-U: S. H. MYLES AND COMPANY LIMITED (APPLICANT) v. W. R. C. LANG (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING AUGUST

10373-65-U: United Steelworkers of America (Complainant) v. I. Waxman & Company (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IT IS MANIFEST THAT THERE IS A SHARP CLASH OF TESTIMONY ON MATTERS OF FACT ESSENTIAL TO OUR DETERMINATION OF THIS CASE BETWEEN THE WITNESSES WHO GAVE EVIDENCE FOR THE UNION AND THOSE WHO TESTIFIED FOR THE RESPONDENT EMPLOYER. THERE CAN BE NO DOUBT THAT IF THE TESTIMONY OF THE UNION'S WITNESSES CONCERNING THE REASONS GIVEN BY THE RESPONDENT S OFFICIALS FOR THE DISCHARGE OF THE AGGRIEVED EMPLOYEES IS ACCEPTED, THAT SUBSTANTIAL AND COM-PELLING GROUNDS EXIST FOR FINDING THAT THE COMPLAINANT HAS SATIS-FIED THE ONUS RESTING ON IT TO PROVE THAT THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT. ON THE OTHER HAND, IF THE EVIDENCE OF THE WITNESSES WHO TESTIFIED ON BEHALF OF THE RESPONDENT AS TO THE CIRCUMSTANCES AND REASONS FOR THE DISMISSAL OF THE EMPLOYEES IS TAKEN AS A MORE CREDIBLE AC-COUNT OF THE FACTS THAN THAT GIVEN BY THE UNION'S WITNESSES, THE COMPLAINT IS WITHOUT FOUNDATION AND MUST BE DISMISSED. THE RESULT IN THIS CASE, THEREFORE, DEPENDS ENTIRELY UPON THE OPINIONS WHICH WE REACH CONCERNING THE CREDIBILITY AND RELIABILITY OF THE VARIOUS WITNESSES.

IN APPROACHING THE PROBLEMS RAISED BY THIS CASE, IT IS, IN OUR OPINION, RELEVANT TO RECALL AND BEAR IN MIND WHAT THE BOARD SAID IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTS, 1960-64 TRANSFER BINDER, \$16,278 AT PP. 1162-1163:-

IN COMPLAINTS UNDER SECTION 65 THERE IS OFTEN. OF COURSE, CONFLICTING TESTIMONY BETWEEN THE EMPLOYER'S STATEMENTS THAT HE HAS FIRED THE EMPLOYEE FOR INCOMPETENCE OR SOME OTHER NON-DISCRIMINATORY REASON AND THE EMPLOYEE'S ALLEGATIONS, BASED USUALLY ON CIRCUMSTANTIAL EVIDENCE. THAT HIS DISMISSAL WAS FOR THE ULTERIOR PURPOSE OF DEFEATING THE UNION. IN WEIGHING THE EVIDENCE AS TO THESE CONFLICTING CLAIMS, THE BOARD MUST CONSIDER ALL THE CIRCUMSTANCES, INCLUDING THE CREDIBILITY OF THE WITNESSES, THE NATURE OF THE REASONS GIVEN, IF ANY, AT THE TIME FOR THE EMPLOYER S ACTION AND THE BASIS THEREFOR, THE EMPLOY-MENT HISTORY OF THE EMPLOYEE AFFECTED, THE EXISTENCE OF CONTEMPORANEOUS UNION ACTIVITY, THE PARTICIPATION BY THIS EMPLOYEE AND OTHER EMPLOYEES IN SUCH ACTIVITIES, ANY . OVERT ACTS OF THE EMPLOYER WHICH MAY HAVE BEEN IN RESPONSE TO SUCH ACTIVITIES, THE TIMING AND MANNER OF THE DISCHARGE, THE LIKELIHOOD OR PROBABILITY OF THE EMPLOYER'S ACTION FOR THE REASONS GIVEN, AND THE FACT THAT THE TRUE REASONS FOR THE DISCHARGE OFTEN LIE EXCLUSIVELY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE EMPLOYER. NEEDLESS TO SAY, HOWEVER, THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY UNFOUNDED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE AN EMPLOYEE S DISCHARGE IS COINCIDENTAL WITH A UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCE OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT. - - THE ONUS OF PROOF RESTING ON THE COMPLAINANT IN A CLAIM UNDER SECTION 65 OF THE ACT IS NO GREATER THAN IN AN ORDINARY CIVIL ACTION, NAMELY THAT TO BE SUCCESSFUL A COMPLAINANT MUST PROVE, BY A PREPONDERANCE OF PROBABILITY THAT THE EMPLOYER. HAS. IN THE MANNER ALLEGED IN THE PROCEEDINGS, DISCRIMINATED AGAINST THE EMPLOYEE CONTRARY TO THE ACT -

WHILE THE WITNESSES MASTROLANNI AND CRISTIANO ARE NOT PROFICIENT IN THE ENGLISH LANGUAGE AND HAD TO GIVE THEIR TESTIMONY THROUGH AN INTERPRETER, THE EVIDENCE INDICATES THAT THEY ARE LONG-SERVICE EMPLOYEES OF THE RESPONDENT AND ITS PREDECESSOR WHO WERE APPARENTLY WELL ABLE TO UNDERSTAND THEIR EMPLOYER SINSTRUCTIONS AND TO MAKE THEMSELVES UNDERSTOOD ON THE JOB. WE SEE NO BASIS FOR DISBELIEVING THEIR ABILITY TO COMPREHEND AND TO REPEAT IN EVIDENCE A SIMPLE STATEMENT SUCH AS THEY TESTIFY WAS MADE TO THEM BY THEIR EMPLOYER TO THE EFFECT THAT THEY WERE BEING DISCHARGED BECAUSE THEY HAD SIGNED FOR THE UNION. IT IS OBVIOUS, HOWEVER, THAT OUR ASSESS-MENT OF THEIR VERACITY AND THE RELIABILITY OF THEIR EVIDENCE MUST TAKE INTO ACCOUNT, AS IT DOES, THE FACT THAT THE CREDIBILITY OF THEIR TESTIMONY COULD NOT BE TESTED THROUGH CROSS-EXAMINATION WITH THE SAME FACILITY AS A WITNESS WHO TESTIFIES IN ENGLISH. THERE IS NO QUESTION ALSO THAT THE CREDIBILITY OF THE WITNESS KRUMER, WHOSE EVIDENCE WAS OF PRIME IMPORTANCE TO THE RESPONDENT BY WAY OF REPLY TO THE TESTIMONY OF THE UNION'S WITNESSES, MUST BE EVALUATED HAVING REGARD TO THE FACT THAT HE REMAINED IN THE BOARD ROOM DURING THE COURSE OF TESTIMONY OF THE UNION'S WITNESSES AS AN ADVISOR TO COUNSEL FOR THE RESPONDENT.

WE ARE CONSTRAINED TO INFER FROM THE EVIDENCE OF WHAT WAS SAID AT THE MEETING OF APRIL 20TH THAT AT LEAST AS EARLY AS THAT DATE WHEN THE RESPONDENT ASSEMBLED ITS EMPLOYEES AND TALKED TO THEM ABOUT AN INSURANCE PLAN AND A RAISE IN PAY THAT THE COMPANY WAS WELL AWARE OF THE FACT THAT THE UNION WAS THEN CONDUCTING AN ORGANIZATIONAL CAMPAIGN AMONG ITS EMPLOYEES. IN ALL THE CIRCUMSTANCES. THE PREPONDERANCE OF PROBABILITY DICTATES THE CONCLUSION ON OUR PART THAT THE EMPLOYER WAS SEEKING TO DISSUADE ITS EMPLOYEES FROM SUPPORT-ING THE UNION BY POINTING OUT TO THEM THE BENEFITS WHICH THEY COULD EXPECT TO RECEIVE WITHOUT IT AND THE DISADVANTAGES THAT THEY COULD EXPECT TO INCUR BY SUPPORTING IT. IN THE CIRCUMSTANCES AND HAVING REGARD TO THE PROBABILITIES OF THE MATTER, WE ARE INCLINED TO FIND IT A LITTLE TOO REMARKABLE TO CONSTITUTE MERE COINCIDENCE THAT MASTROLANNI®S PAST MISDEMEANOURS SHOULD SUDDENLY COME UP FOR REVIEW BY THE EMPLOYER JUST AT THIS PARTICULAR TIME. FURTHER, WE ARE DISINCLINED TO BELIEVE IT PROBABLE THAT THE RESPONDENT WOULD HAVE DISCHARGE CRISTIANO, A LONG-SERVICE EMPLOYEE, WITH SUCH PRECIPITOUS HASTE AND IN SUCH AN ABRUPT AND SUMMARY MANNER, IF AS THE COMPANY'S WITNESSES SAY THE REASON WAS THAT THE COMPANY WAS CHANGING TO A NEW PROCESS FOR WHICH CRISTIANO WAS NOT A SUITABLE EMPLOYEE. SURELY THE COMPANY. IF IT WAS CONTEMPLATING A CHANGE IN PROCESS. DID NOT DECIDE TO DO SO OVERNIGHT. IT SEEMS MORE PROBABLE THAT IF THE COMPANY HAD DECIDED TO REPLACE CRISTIANO FOR THE REASONS GIVEN THAT. IN THE CIRCUMSTANCES, CRISTIANO WOULD HAVE BEEN GIVEN SOME ADVANCE NOTICE OF THE COMPANY S INTENTIONS TO DISMISS HIM. MOREOVER, WE FIND IT SOMEWHAT DIFFICULT TO BELIEVE THAT CRISTIANO WAS NOT QUALIFIED FOR THE JOB UNDER THE NEW PROCESS HAVING REGARD TO HIS LENGTH OF SERVICE AND PAST EXPERIENCE WITH THE COMPANY AND TO THE FACT THAT UP TO THIS TIME HE HAD BEEN A CAPABLE AND SATISFACTORY EMPLOYEE. MOREOVER, THE RESPONDENT'S TESTIMONY THAT AN ADVERTISEMENT WHICH IT PLACED IN THE NEWSPAPER FOR PERSONS TO STRIP SCRAP MOTOR BLOCKS BROUGHT APPLICATIONS FROM 200 APPLICANTS ALL OF WHOM WERE UNQUALIFIED STRAINS CREDULITY BEYOND THE BREAKING POINT. WE ARE NOT PERSUADED THAT THE JOB OF STRIPPING SCRAP MOTOR BLOCKS IS AS TECHNICAL AND SKILLED AS THE RESPONDENT WOULD HAVE US BELIEVE OR THAT IT COULD NOT HAVE BEEN COMPETENTLY DONE BY CRISTIANO. IN THE CIRCUMSTANCES, THE IMPROBABILITIES INHERENT IN THE EXPLANATIONS OF THE EVENTS LEADING TO AND CAUSING THE DISMISSAL OF MASTROLANNI AND CRISTIANO AS GIVEN BY THE RESPONDENT'S WITNESSES. INEVITABLY TEND TO MILITATE AGAINST AND REFLECT ON THE SINCERETY OF THE COMPANY'S PURPORTED REASONS FOR DISCHARGING THEM.

While, because of some obvious partisan exaggeration and understatement, there are some aspects of their testimony which we would hesitate to accept in its entirety, we are impelled from our observations of their demeanour in the witness box and the manner in which they gave their evidence and from the relative probabilities of the matter to believe that the testimony of the two aggrieved employees generally merits greater credence than that of the witnesses for the respondent. We are inclined, therefore, to accept the positive assertions of Mastroianni and Cristiano, in preference to the denials thereof of the company witnesses, that these two employees were told that they were being "Laid off" because they had signed for the union.

IN THE RESULT, WE FIND THAT IN DISCHARGING MASTROIANNI AND CRISTIANO, THE RESPONDENT WAS ACTUATED BY A DISCRIMINATORY MOTIVE TO GET RID OF THESE EMPLOYEES BECAUSE THEY HAD, AS THE COMPANY BELIEVED, SIGNED FOR THE UNION.

OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT EMPLOYER IS AS FOLLOWS:-

- (a) THE RESPONDENT SHALL FORTHWITH EMPLOY AND REINSTATE GUISEPPE MASTROIANNI AND ANTONIO CRISTIANO IN THE SAME OR LIKE POSITIONS IN WHICH THEY WERE EACH EMPLOYED ON MAY 4TH, 1965, WITH THE SAME WAGES AND OTHER EMPLOYMENT BENEFITS AS EACH WERE THEN RECEIVING ON THAT DATE:
- (B) THE RESPONDENT SHALL FORTHWITH PAY TO GUISEPPE MASTROIANNI THE SUM OF \$34.20 BY WAY OF COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FOR THE PERIOD BETWEEN THE DATE OF HIS DISCHARGE AND HIS ACQUISITION OF NEW EMPLOYMENT;
- (c) THE RESPONDENT SHALL FORTHWITH PAY TO ANTONIO CRISTIANO THE SUM OF \$30.40 BY WAY OF COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FOR THE PERIOD BETWEEN THE DATE OF HIS DISCHARGE AND HIS ACQUISITION OF NEW EMPLOYMENT."

BOARD MEMBER D. ALAN PAGE DISSENTED AND SAID:-

" DISSENT.

| SUBMIT THAT THE COMPLAINANT HAS FAILED TO PROVE THAT
THE AGGRIEVED PERSONS WERE DISCHARGED "BECAUSE THEY WERE MEMBERS
OF THE COMPLAINANT TRADE UNION OR HAD EXPRESSED THEIR INTENTION
OF BECOMING SUCH", AS ALLEGED IN THE COMPLAINT, FOR THE FOLLOWING REASONS:-

- 1. NEITHER OF THE AGGRIEVED WAS ABLE TO SPEAK OR UNDERSTAND ENGLISH WITH SUFFICIENT FACILITY TO GIVE EVIDENCE IN THAT LANGUAGE. ONE OF THE AGGRIEVED STATED THROUGH THE INTERPRETER THAT HE UNDERSTOOD "ONE—THIRD OR ONE—FOURTH OF HIS WORDS". YET THE DECISION IS BASED IN PART ON STATEMENTS WHICH THE AGGRIEVED ALLEGE WERE MADE TO THEM BY A COMPANY OFFICIAL IN THE ENGLISH LANGUAGE.
- THE USE OF A TRANSLATOR PRECLUDED COUNSEL FOR THE RESPONDENT FROM CONDUCTING AN EFFECTIVE CROSS-EXAMINATION.
- 3. IN ASSESSING CREDIBILITY, EVIDENCE TO THE EFFECT THAT MASTROIANNI HAD BEEN DISCHARGED FOR USING ABUSIVE LANGUAGE TO A COMPANY WITNESS FOLLOWING A SERIES OF MISDEMEANOURS

WAS REJECTED. THE DECISION PREFERS TO ACCEPT THE CREDIBILITY OF MASTROIANNI WHO, WHEN ACCUSED OF SEIZING ANOTHER EMPLOYEE BY THE THROAT DURING AN ARGUMENT, FIRST DENIED IT THEN STATED THAT THE OTHER EMPLOYEE "TALKED TOO MUCH" AND "WAS ALWAYS FIGHTING"; LATER, HE AFFIRMED THAT THEY WERE "ALWAYS LIKE TWO BROTHERS."

- 4. No evidence was adduced to show that the respondent knew that the grievants "were members of the comPLAINANT TRADE UNION OR HAD EXPRESSED THEIR INTENTION OF BECOMING SUCH".
- 5. Finally, I do not subscribe to the view that the burden of proof rests on the employer when he is accused of anti-union activities. I submit that this is not only contrary to our concepts of justice, but it places in the hands of unions a weapon which can be used for the intimidation and harassment of employers during union organization campaigns."

10461-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. IRVING-CHARLES SUPERMARKETS LIMITED (RESPONDENT).

10515-65-U: MISS ROBERTA ORBAN (COMPLAINANT) v. THOMPSON PRODUCTS LIMITED (RESPONDENT).

10526-65-U: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Highview Motors Limited (Respondent).

10542-65-U: United Brotherhood of Carpenters and Joiners of America, Local Union 2579 (Complainant) v. Weyerhaeuser Canada Limited (Respondent).

10652-65-U: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (AFL-C10) (CLC) (Complainant) v. Central Precast Products Limited (Respondent).

10706-65-U: MISS PIA HOCK (COMPLAINANT) V. MRS. ERNA SORENSEN (RESPONDENT).

10785-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. MOYER'S SAND (1965)

## APPLICATION UNDER SECTION 47A DISPOSED OF DURING AUGUST

10359-65-M: Belton-Quinn Lumber Limited (Applicant) v. Local #141 Teamsters, Chauffeurs, Warehousemen and Helpers and Local 89, International Woodworkers of America (Respondents).

Unit: "ALL EMPLOYEES OF BELTON-QUINN LUMBER LIMITED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (38 EMPLOYEES IN THE UNIT).

Number of Names on Revised Voters' List 38

Number of Ballots Cast 38

Number of Ballots Marked in Favour of
Local 89, International Woodworkers
of America 28

Number of Ballots Marked in Favour of
Local #141, Teamsters, Chauffeurs,
Warehousemen and Helpers 10

(SEE INDEXED ENDORSEMENT PAGE 373 ).

### REFERENCE TO BOARD PURSUANT TO SECTION 79A DISPOSED OF DURING AUGUST

10539-65-M: International Union of Doll and Toy Workers of U.S.A. and Canada (Trade Union) v. Wiseman Bros. Limited, carrying on business under the firm name and Style of Carousel Toy Company (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON THE QUESTION REFERRED TO IT BY THE MINISTER, THE BOARD FINDS, FOR THE REASONS GIVEN IN WRITING, THAT THE TRADE UNION IS NOT ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A OF THE ACT."

(WRITTEN REASONS).

## APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING AUGUST

10152-64-M: Union of Canadian Retail Employees, C.L.C. (Applicant) v. Super City Discount Foods Limited (Respondent).

IN THIS APPLICATION THE BOARD FOUND THAT TWO NAMED PERSONS EXERCISE MANAGERIAL FUNCTIONS AND ARE THEREFORE NOT EMPLOYEES FOR THE PURPOSES OF THE LABOUR RELATIONS ACT, WHILE ANOTHER NAMED PERSON DOES NOT EXERCISE THESE FUNCTIONS AND IS THEREFORE AN EMPLOYEE UNDER THE ACT.

BOARD MEMBER D.B. ARCHER DISSENTED IN PART.

# APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10075-64-R: Local 280 of the Hotel & Restaurant Employee's and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Harold Gross Limited (Respondent). (GRANTED MARCH, 1965).

(SEE INDEXED ENDORSEMENT PAGE 375 ).

10146-64-R: Wood, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 (APPLICANT)
v. STANDON LATHING (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Following the issuing of the Board's certificate in this matter on March 30, 1965 the respondent filed a late reply and requested the Board to reconsider its decision. Begause a question of the Board's jurisdiction was in issue the matter was listed for hearing in April which hearing was adjourned sine die at the request of the parties. The case was ultimately heard by the Board on August 30th.

At the hearing the respondent informed the Board that IT was not in a position to adduce evidence with respect to the Question raised in its reply. Accordingly the request for Reconsideration is rejected and the Board's decision of March 30, 1965 is hereby confirmed.

THE APPLICANT HAS ASKED THE BOARD IN VIEW OF THE TIME LAPSE, TO UPDATE ITS CERTIFICATE OR ISSUE A NEW CERTIFICATE. ASSUMING, BUT WITHOUT DECIDING, THAT THE BOARD WOULD HAVE JURISDICTION TO DO THIS, WE ARE OF THE OPINION THAT SUCH COURSE OF ACTION SHOULD NOT BE TAKEN IN THIS CASE. THE APPLICANT, OF COURSE, IN MAKING ITS REQUEST TO THE BOARD HAD IN MIND SECTION 96 OF THE LABOUR RELATIONS ACT. IN OUR VIEW, IF AN APPLICATION IS MADE UNDER THAT SECTION, THE QUESTION OF TIMELINESS MAY BE MORE PROPERLY ARGUED AND CONSIDERED AT THAT TIME."

### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

10126-64-U: ELLIS DON LIMITED (APPLICANT) v. KENNETH JACKSON (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant, by Letters dated August 4th and August 24th, 1965, has requested the Board to reconsider its decision dated April 1st, 1965, in this matter.

THE BOARD HAS ISSUED ITS CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT IN THE TERMS REQUESTED BY THE APPLICANT IN ITS APPLICATION AND THE FORMAL CONSENT AS SIGNED BY THE BOARD WAS PREPARED BY THE APPLICANT. SINCE THE APPLICANT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND SINCE THE BOARD HAS ISSUED ITS CONSENT IN THE TERMS REQUESTED BY THE APPLICANT IN ITS APPLICATION, THE BOARD DOES NOT THEREFORE CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION DATED APRIL 1ST, 1965, IN THIS MATTER.

THE APPLICANT'S REQUEST IS ACCORDINGLY DENIED."

### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

9732-64-U: DISTRICT 50, U.M.W.A., REGION 75 ON BEHALF OF (MRS. JUNE LASENBY) (COMPLAINANT) V. SENTRY DEPARTMENT STORES LTD. (RESPONDENT). (DISMISSED).

#### INDEXED ENDORSEMENTS - CERTIFICATION

10052-64-R: Office Employees International Union Local 131 AFL-CIO (Applicant) v. Pickford and Black Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent challenges the constitutional competence of this Board under The Labour Relations Act to entertain this application. It is contended on behalf of the respondent that it is engaged in "a work, undertaking or business operated or carried on for or in connection with navigation and shipping, and as such falls within the legislative authority of the Parliament of Canada" over navigation and shipping under section 91(10) of the B.N.A. Act. In consequence, it is argued by the respondent, that the labour relations of its employees are governed by section 53 of The Industrial Relations and Disputes investigation Act, R.S.C. 1962, c. 152. The relevant portions of section 53 of The Industrial Relations and Disputes Investigation Act read as follows:-

- 53. PART 1 OF THIS ACT SHALL APPLY IN RESPECT OF

  EMPLOYEES WHO ARE EMPLOYED UPON OR IN CONNECTION

  WITH THE OPERATION OF ANY WORK, UNDERTAKING OR

  BUSINESS THAT IS WITHIN THE LEGISLATIVE AUTHORITY

  OF THE PARLIAMENT OF CANADA INCLUDING, BUT NOT

  SO AS TO RESTRICT THE GENERALITY OF THE FOREGOING,
  - (A) WORKS, UNDERTAKINGS OR BUSINESSES OPERATED CARRIED ON FOR OR IN CONNECTION WITH NAVIGATION OR SHIPPING, WHETHER INLAND OR MARITIME, INCLUDING THE OPERATION OF SHIPS AND TRANSPORTATION BY SHIP ANYWHERE IN CANADA; —
- (B) ANY WORK, UNDERTAKING OR BUSINESS OUTSIDE
  THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE
  LEGISLATURE OF THE PROVINCE;

AND IN RESPECT OF THE EMPLOYERS OF ALL SUCH EMPLOYEES IN THEIR RELATIONS WITH SUCH EMPLOYEES - -.

THE RESPONDENT COMPANY WAS INCORPORATED BY MEMORANDUM AND ARTICLES OF ASSOCIATION UNDER THE LAWS OF THE PROVINCE OF NOVA SCOTIA ON MARCH 31st, 1964. ON MAY 15th, 1964, THE PROVINCIAL SECRETARY OF ONTARIO ISSUED LETTERS PATENT GRANTING THE RESPONDENT THE RIGHT TO CARRY ON ITS BUSINES AND TO EXERCISE ITS POWERS IN ONTARIO. THE RIGHTS, POWERS AND PRIVILEGES OF THE RESPONDENT AS

SET FORTH IN THE LETTERS PATENT STATE, INTER ALIA, AS FOLLOWS:-

- (A) TO CARRY ON IN ALL ITS BRANCHES THE BUSINESS OF SHIP OWNERS, AGENTS AND BROKERS; AND
- (B) TO PURCHASE, CHARTER, HIRE, LEASE, TAKE IN EXCHANGE, CONSTRUCT OR OTHERWISE ACQUIRE, OWN, MAINTAIN, OPERATE AND MANAGE, IMPROVE DEVELOP, REPAIR, ALTER, SELL, EXCHANGE, LET FOR HIRE OR OTHERWISE DEAL WITH AND DISPOSE OF SHIPS - FREIGHT AND PASSENGER STATIONS --

The operations of the respondent company in Ontario consist solely of acting as the exclusive booking agent, on a commission basis, for passengers travelling on a ship operated by the Gdynia America Line. This ship, known as the Batory has a capacity for some 818 passengers and sails monthly from Montreal to foreign ports. The only office maintained by the respondent, apart from its Nova Scotia office, is in Toronto where it employs some 8 persons who would fall within the description of the bargaining unit sought by the applicant. The respondent receives bookings at the Toronto office for passengers on the Batory from all over Canada and the United States. These bookings may be made with the United States.

APART FROM ITS CONTRACT MAKING THE RESPONDENT ITS EXCLUSIVE BOOKING AGENT FOR PASSENGERS, GDYNIA AMERICA LINES HAS NO INTEREST OR RELATIONSHIP, PROPRIETORY OF OTHERWISE, IN NOR DOES IT EXERCISE ANY CONTROL OR SUPERVISION OVER THE RESPONDENT'S OPERATIONS OR EMPLOYEES. IN OTHER WORDS, CONSISTENT WITH ITS OBLIGATIONS AS AN EXCLUSIVE BOOKING AGENT, THE RESPONDENT EXISTS AND OPERATES COMPLETELY INDEPENDENTLY OF GDYNIA AMERICA LINES.

FREIGHT BOOKINGS FOR CONVEYANCE ON THE BATORY ARE NOT HANDLED BY THE RESPONDENT BUT BY A FREIGHT AGENCY IN TORONTO. WHILE THE COMPANY'S OFFICE IN NOVA SCOTIA DOES TO SOME EXTENT ALSO ACT AS A BOOKING AGENT FOR PASSENGERS, IT IS PRINCIPALLY CONCERNED WITH BOOKING FREIGHT. THERE IS NO EVIDENCE THAT THE RESPONDENT HAS IN THE PAST EXERCISED OR NOW EXERCISES ANY OF THE POWERS CONTAINED IN ITS MEMORANDUM AND ARTICLES OF ASSOCIATION BEYOND THAT OF A BOOKING AGENT FOR PASSENGERS IN ONTARIO AND FOR FREIGHT AND PASSENGERS IN NOVA SCOTIA.

The question as to whether the Labour Relations of the Respondent come within the Jurisdiction of the Parliament of Canada or under the Ontario Labour Relations Act depends upon whether the Operations of the respondent constitute a work, undertaking or business operated or carried on for or in connection with Navigation and Shipping. In Montreal City v. Montreal Harbour Commissioners, (1926) A.C. 299, Viscount Haldone at p. 312 stated:-

-- THERE IS NO DOUBT THAT THE POWER TO CONTROL
NAVIGATION AND SHIPPING CONFERRED ON THE DOMINION
BY S. 91 IS TO BE WIDELY CONSTRUED.

The principle of giving these words a wide construction was reiterated in the Stevedores Case. (In the Matter of a Reference as to the Validity of the Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152 and as to its Applicability in Respect of Certain Employees of the Eastern Canada Stevedoring Company Limited, (1955) S.C.R. 529) and in Underwater Gas Developers v. L.R.B. (1960) 21 D.L.R. 345, C.C.H. Canadian Labour Law Reporter 1960-64, 158.

IN SUPPORT OF HIS ARGUMENT THAT THE LABOUR RELATIONS OF THE RESPONDENT FALL WITHIN THE AUTHORITY OF THE PARLIAMENT OF CANADA, COUNSEL FOR THE RESPONDENT RELIES MAINLY ON THE REASONING AND PRINCIPLES APPLIED IN THE STEVEDORES CASE. IT IS PERTINENT, THEREFORE. TO EXAMINE IN SOME DETAIL THE FACTS AND JUDGMENTS GIVEN IN THAT CASE. THE EASTERN CANADA STEVEDORING CO. LTD., WHICH WAS INCORPORATED UNDER THE COMPANIES ACT OF CANADA. 1934. C. 33. FURNISHED STEVEDORING AND TERMINAL SERVICES FOR CERTAIN SHIPPING COMPANIES IN PORTS INCLUDING HALIFAX, ST. JOHN, MONTREAL, AND TORONTO. IN TORONTO. ITS OPERATIONS CONSISTED EXCLUSIVELY OF SERVICES RENDERED IN CONNECTION WITH THE LOADING AND UNLOADING OF SHIPS, PURSUANT TO CONTRACTS WITH SEVEN SHIPPING COMPANIES TO HANDLE ALL LOADING AND UNLOADING OF THEIR SHIPS ARRIVING AND DEPARTING. ALL THESE SHIPS WERE OPERATED ON REGULAR SCHEDULES BETWEEN PORTS IN CANADA AND PORTS OUTSIDE OF CANADA. IT WAS HELD BY A MAJORITY OF THE SUPREME COURT OF CANADA THAT THE STEVEDORING SERVICES PROVIDED BY THE EASTERN CANADA STEVEDORING CO. LTD. WERE, IN THE CIRCUM-STANCES OF THAT CASE, AN ESSENTIAL PART OF NAVIGATION AND SHIPPING.

IT IS OF INTEREST TO CONSIDER THE FOLLOWING EXCERPTS FROM SOME OF THE JUDGMENTS IN THE STEVEDORES CASE:-

KERWIN C.J.C. AT P. 731:-

- THE ACT BEFORE US SHOULD NOT BE CONSTRUED TO APPLY TO EMPLOYEES WHO ARE EMPLOYED AT REMOTE STAGES, BUT ONLY TO THOSE WHOSE WORK IS INTIMATELY CONNECTED WITH THE WORK, UNDERTAKING OR BUSINESS. IN PITH AND SUBSTANCE THE ACT RELATES ONLY TO MATTERS WITHIN THE CLASSES OF SUBJECTS WITHIN THE SPECIFIC HEADS OF S. 91 OF THE B.N.A. ACT. - - THE FACT THAT THE COMPANY BY ITS CHARTER HAS POWER, "TO CARRY ON A GENERAL DOCK AND STEVEDORING BUSINESS IN ALL ITS BRANCHES" DOES NOT REQUIRE US TO CONSIDER THE POSSIBILITY OF SUCH A POWER BEING USED, OR INDEED THE POSSIBILITY OF ANYTHING EXCEPT THE FACTS AS THEY ARE PRESENTED TO US. THE CIRCUMSTANCES THAT THE COMPANY IS AN ORGANIZATION INDEPENDENT OF THE

STEAMSHIP COMPANIES WITH WHICH IT CONTRACTED, DOES
NOT, IN MY OPINION, AFFECT THE MATTER, AND I FIND IT
DIFFICULT TO DISTINGUISH THE EMPLOYEES WE ARE
CONSIDERING FROM THOSE ENGAGED IN SIMILAR WORK,
EMPLOYED DIRECTLY BY A SHIPPING COMPANY WHOSE SHIPS
PLY BETWEEN CANADIAN AND FOREIGN PORTS. THE
QUESTION WHETHER EMPLOYEES OF OTHER INDEPENDENT
ORGANIZATIONS ENGAGED IN FURNISHING SERVICES ARE
COVERED BY THE ACT SHOULD BE LEFT UNTIL THE OCCASION
ARISES. THE EMPLOYEES OF THE COMPANY IN TORONTO - ARE PART AND PARCEL OF WORKS IN RELATIONS TO WHICH THE
PARLIAMENT OF CANADA HAS EXCLUSIVE JURISDICTION TO
LEGISLATE - -.

(EMPHASIS ADDED).

TASCHEREAU J. AT P. 736-737:-

- The words "IN CONNECTION WITH" FOUND IN S. 52, (OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT) MUST NOT OF COURSE BE GIVEN TOO WIDE AN APPLICATION. BUT, I THINK IT QUITE IMPOSSIBLE TO SAY IN THE ABSTRACT, WHAT IS AND WHAT IS NOT "IN CONNECTION WITH" - - I CAN IMAGINE NO GENERAL FORMULA THAT COULD EMBRACE ALL CONCRETE EVENTUALITIES, AND I SHALL THEREFORE NOT ATTEMPT TO LAY ONE DOWN, AND DETERMINE ANY RIGID LIMIT. EACH CASE MUST BE DEALT WITH SEPARATELY - THE TRANSPORTATION OF GOODS BY WATER BY MEANS OF SHIPS, IS AN OPERATION ENTIRELY DEPENDENT ON THE SERVICES OF THE STEVEDORES OF THE COMPANY AND BOTH ARE SO CLOSELY CONNECTED THAT THEY MUST BE CONSIDERED AS FORMING PART OF THE SAME BUSINESS. - -

KELLOCK J. AT P. 748:-

- - IN MY VIEW, THE WORDS "IN CONNECTION WITH - - ARE NOT TO BE CONSTRUED IN A REMOTE SENSE BUT AS LIMITED TO PERSONS ACTUALLY ENGAGED IN THE OPERATION OF THE WORK, UNDERTAKING OR BUSINESS WHICH MAY BE IN QUESTION. JUST WHAT ARE THE PROPER LIMITS IN THIS CONNECTION OF THE WORD "EMPLOYEES" IN THE SECTION MUST BE LEFT FOR DETERMINATION IN PARTICULAR CASES AS THEY ARISE. FOR EXAMPLE, PERSONS PERFORMING MERELY CASUAL SERVICES UPON OR IN CONNECTION WITH A DOMINION "UNDERTAKING" WOULD NOT NECESSARILY FALL WITHIN THE AMBIT OF THAT WORD AS USED IN S. 92(10). - - (EMPHASIS ADDED).

AND AT P. 753:- .

-- THE QUESTION THEREFORE ARISES AS TO WHETHER THE WORK OF STEVEDORING FALLS WITHIN HEAD (10) OF S. 91.

IN MY OPINION, THIS HEAD OF JURISDICTION EXTENDS TO
ALL MATTERS CONNECTED WITH A SHIP AS AN INSTRUMENT OF
NAVIGATION AND TRANSPORT OF CARGO AND PASSENGERS.
THE JURISDICTION MUST EXTEND TO STOWAGE AND, IN
MY OPINION, TO LOADING AND DISCHARGE ALSO, WHICH
OPERATIONS HAVE BEEN TRADITIONALLY THE RESPONSIBILITY OF THE SHIP AND CARRIED OUT UNDER THE
DIRECTION OF THE MASTER - -

ESTEY J. AT P. 760:-

- THE LOADING AND UNLOADING OF SHIPS HAVE ALWAYS
BEEN REGARDED AS THE DUTY AND RESPONSIBILITY OF THE
OWNER OR CHARTER AND TO THIS EXTENT IT IS OF
ASSISTANCE IN HOLDING THAT THE WORK OF UNLOADING
AND LOADING IS AN ESSENTIAL PART OF THE TRANSPORTATION OF FREIGHT IN VESSELS. - THE FACT THAT THE
STEVEDORES - WERE EMPLOYEES OF THE EASTERN
CANADA STEVEDORING CO. LTD. IS NOT CONCLUSIVE OF,
IF INDEED MATERIAL TO, A CONSIDERATION OF THE
QUESTION WHETHER THEY ARE SUBJECT TO THE LEGISLATIVE
JURISDICTION OF THE PARLIAMENT OF CANADA - SUCH A
QUESTION MUST BE RESOLVED BY A CONSIDERATION OF THE
NATURE AND CHARACTER OF THE SERVICES IN RELATION
TO THE WORKS AND UNDERTAKINGS OF THE LINES OF
STEAMSHIP HERE IN QUESTION. - -

IT IS READILY APPARENT THAT THE JUDGES IN THE STEVEDORES CASE CAREFULLY REFRAINED FROM EXPRESSING ANY VIEWS AS TO WHETHER SERVICES SUPPLIED BY EMPLOYEES WHO WERE NOT SO INTIMATELY INVOLVED WITH THE LOADING AND UNLOADING OF FREIGHT AS THE STEVEDORES WOULD BE ENGAGED IN AN OPERATION IN CONNECTION WITH SHIPPING AND NAVIGATION. THE JUDGMENTS PLAINLY EMPHASIZE THE FACT THAT THE SERVICES OF THE STEVEDORES FORMED A DIRECT AND INTEGRAL PART OF SHIPPING AND NAVIGATION AS DISTINCT FROM SERVICES OF A REMOTE OR MARGINAL NATURE TO SHIPPING AND NAVIGATION. THE EMPLOYEES IN THE STEVEDORES CASE WERE ENGAGED IN THE ACTUAL PHYSICAL ACTIVITY OF LOADING AND UNLOADING SHIPS PLYING BETWEEN CANADIAN AND INTER-NATIONAL PARTS. IN THE PRESENT CASE THE FULL EXTENT OF THE RESPONDENT'S CONCERN WITH PASSENGERS TRAVELLING ON THE BATORY IS TO LIST THEIR BOOKINGS AND SELL THEM THEIR TICKETS. IT IS CERTAINLY A MATTER OF COMMON KNOWLEDGE, OF WHICH WE ARE IMPELLED TO TAKE COGNIZANCE, THAT THERE ARE MANY TRAVEL AGENCIES IN EXISTENCE TODAY WHICH, WHILE THEY MAY NOT ALL HAVE AN EXCLUSIVE AGENCY SUCH AS IS POSSESSED BY THE RESPONDENT WITH ONE SHIPPING LINE OR OTHER TRANSPORTATION FIRM FOR PASSENGER BOOKINGS, DO PERFORM SERVICES NOT UNLIKE THOSE OF THE RESPONDENT FOR MANY DIFFERENT INTERNATIONAL SHIPPING LINES OR TRANSPORTATION FIRMS. IT SEEMS UNREALISTIC AND AN OBVIOUS STRAINING OF LANGUAGE TO SAY THAT SUCH BOOKING AND TICKET AGENCIES ARE ENGAGED IN SHIPPING AND NAVIGATION MERELY BECAUSE THEY ARRANGE BOOKINGS FOR AND SELL

TICKETS TO PASSENGERS FOR PASSAGE ON INTERNATIONAL SHIPS. IN OUR VIEW, THE FACT THAT THE RESPONDENT IS AN EXLUSIVE AGENT FOR SUCH PURPOSES DOES NOT, IN THE PRESENT CIRCUMSTANCES, CHANGE ITS CHARACTER FROM THOSE OF OTHER SUCH AGENCIES WHO ACT AT LARGE FOR MANY PRINCIPALS.

AS IS STATED IN THE JUDGMENTS QUOTED FROM THE STEVEDORES CASE, THE WORDS "IN CONNECTION WITH" FOUND IN SECTION 53 OF THE INDUSTRIAL DISPUTES AND INVESTIGATION ACT MUST NOT BE GIVEN TOO WIDE A MEANING AND MUST NOT BE CONSTRUED IN A REMOTE SENSE. THE CIRCUMSTANCE THAT THE RESPONDENT BY ITS MEMORANDUM AND ARTICLE OF ASSOCIATION IS EMPOWERED TO CARRY ON OPERATIONS WHICH NO DOUBT WOULD FALL WITHIN THE CATEGORY OF NAVIGATION AND SHIPPING "DOES NOT (USING THE WORDS OF KERWIN C.J.C.) REQUIRE US TO CONSIDER THE POSSIBILITY OF SUCH A POWER BEING USED, OR INDEED THE POSSIBILITY OF ANYTHING EXCEPT THE FACTS AS THEY ARE PRESENTED TO US". IN OUR OPINION, THE NATURE AND CHARACTER OF THE SERVICES RENDERED BY THE RESPONDENT PLAINLY ARE NOT SO INTIMATELY CONNECTED WITH NAVIGATION AND SHIPPING AS TO BE CONSIDERED. AS WERE THE STEVEDORING SERVICES IN THE STEVEDORES CASE, AN ESSENTIAL PART THEREOF. IN OUR VIEW, OF THE JUDGMENTS, THE STEVEDORES CASE PLAINLY DOES NOT DECIDE THAT OPERATIONS IN THE NATURE OF THOSE CARRIED ON BY THE RESPONDENT SHOULD BE CONSIDERED TO BE IN CONNECTION WITH SHIPPING AND NAVIGATION, ON THE CONTRARY. THE PRINCIPLES AND REASONING ENUNCIATED IN THE STEVEDORES CASE MAKE IT DIFFICULT FOR US TO SEE HOW THE OPERATIONS OF THE RESPONDENT CAN FAIRLY BE DESCRIBED AS NAVIGATION AND SHIPPING. IN ALL THE CIRCUMSTANCES, THEREFORE, AND IN THE ABSENCE OF ANY JUDGMENT OF THE COURTS TO SUPPORT A CONTRARY VIEW, WE ARE CONSTRAINED TO FIND THAT THE OPERATIONS OF THE RESPONDENT IN TORONTO AND THE LABOUR RELATIONS OF ITS EMPLOYEES ARE PRIMA FACIE MATTERS OF LOCAL INTEREST FALLING WITHIN THE LEGISLATIVE COMPETENCE OF THE PROVINCE OF ONTARIO. IN THE RESULT, WE FIND THAT THE RESPONDENT IS SUBJECT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THAT THIS BOARD IS COMPETENT TO ENTERTAIN THE INSTANT APPLICATION FOR CERTIFICATION. 11

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

THE ONLY EVIDENCE BEFORE THE BOARD DISCLOSED THAT THE RESPONDENT IS ENGAGED EXCLUSIVELY IN HANDLING THE PASSENGER BOOKINGS FOR ONE SHIP OF THE GDYNIA AMERICA STEAMSHIP LINE KNOWN AS "THE BOTARY". THIS SHIP OPERATES BETWEEN MONTREAL AND VARIOUS PORTS IN THE BRITISH ISLES AND CONTINENTAL EUROPE AND THERE IS NO QUESTION BUT THAT THE OPERATION OF THE STEAMSHIP LINE IS A MATTER WITHIN THE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA UNDER

Section 92(10) of the British North America Act. It is equally clear that the passenger booking operation by its very nature is an essential and integral part of the business of the steamship line, and cannot, in any sense, be considered as employment at a remote stage of the operation. The respondent has authority to and actually allots all passenger space on "The Botary". This is not the case of a travel service business which merely acts on behalf of clients as a conduit and requests bookings from the steamship line itself, or in the instant case from the respondent.

If such an operation was conducted by the Steamship Line itself as the evidence disclosed was often the case, those employees engaged in that aspect of the total operation would, without doubt, be governed in their labour relations by the industrial relations and Disputes Investigation Act, Revised Statutes of Canada, 1952, Chapter 152. Surely then, if this part of the total operation is performed by an outside agency and the sole existence and function of the outside agency is to perform this operation for one ship of the steamship line, those employees engaged in the passenger booking operation would still be employed in a work, undertaking or business operated or carried on for or in connection with shipping.

I AM UNABLE TO DISTINNGUISH THE PRESENT CASE FROM THE DECISION OF THE SUPREME COURT OF CANADA IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT, REVISED STATUTES OF CANADA, 1952, CHAPTEN 152, AS TO ITS APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED, (1955) 3 D.L.R. 721, CITED BY COUNSEL FOR THE RESPONDENT. THE CASE WAS HEARD BEFORE KERWIN, C.J.C., TASCHEREAU, RAND, KELLOCK, ESTEY, LOCKE, CARTWRIGHT, FAUTEAUX AND ABBOTT, J.J.

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL REFERRED
THE FOLLOWING QUESTIONS TO THE COURT FOR HEARING AND CONSIDERATION -

- (1) Does the Industrial Relations and Disputes Investigation Act, Revised Statutes of Canada, 1952, Chapter 152, apply in respect of the employees in Toronto of the Eastern Canada Stevedoring Co., Ltd., employed upon or in connection with the operation of the work, undertaking or business of the company as hereinbefore described?
- (2) Is the Industrial Relations and Disputes Investigation
  Act, Revised Statutes of Canada, 1952, <u>ultra vires</u>
  of the Parliament of Canada either in whole or in part
  and, if so, in what particular or particulars and to
  what extent?

THE DECISION OF THE COURT WAS HANDED DOWN ON JUNE 28TH, 1955.

RAND DISSENTING. IT UNANIMOUSLY ANSWERED QUESTION (2) IN THE NEGATIVE STATING THAT SECTIONS 1 TO 53, INCLUSIVE, OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT IS INTRAVIRES OF THE PARLIAMENT OF CANADA. THESE WERE THE ONLY SECTIONS OF THE ACT TO WHICH ARGUMENT WAS ADDUCED AND NOTHING WAS SAID AS TO THE OTHERS.

THE FOLLOWING EXCERPTS FROM THE JUDGMENT OF THE LEARNED JUSTICE'S BRING THE ISSUES PLACED BEFORE THE COURT AND THE REASONS FOR DECISIONS SHARPLY INTO FOCUS -

KERWIN, C.J.C., AT PAGE 731 -

"IN CONNECTION WITH THE FIRST QUESTION, THE FACT THAT THE COMPANY BY ITS CHARTER HAS POWER TO CARRY ON A GENERAL DOCK AND STEVEDORING BUSINESS IN ALL ITS BRANCHES DOES NOT REQUIRE US TO CONSIDER THE POSSI-BILITY OF SUCH A POWER BEING USED, OR INDEED THE POSSIBILITY OF ANYTHING EXCEPT THE FACTS AS THEY ARE PRESENTED TO US. THE CIRCUMSTANCES THAT THE COMPANY IS AN ORGANIZATION INDEPENDENT OF THE STEAMSHIP COMPANIES WITH WHICH IT CONTRACTED. DOES NOT. IN MY OPINION, AFFECT THE MATTER, AND | FIND IT DIFFICULT TO DISTINGUISH THE EMPLOYEES WE ARE CONSIDERING FROM THOSE, ENGAGED IN SIMILAR WORK, EMPLOYED DIRECTLY BY A SHIPPING COMPANY WHOSE SHIPS PLY BETWEEN CANADIAN AND FOREIGN PORTS. THE QUESTION WHETHER EMPLOYEES OF OTHER INDEPENDENT ORGANIZATIONS ENGAGED IN FURNISH-ING SERVICES ARE COVERED BY THE ACT SHOULD BE LEFT UNTIL THE OCCASION ARISES. THE EMPLOYEES OF THE COMPANY IN TORONTO, AS THEY WERE ENGAGED IN THE YEAR 1954, ARE PART AND PARCEL OF WORKS IN RELATION TO WHICH THE PARLIAMENT OF CANADA HAS EXCLUSIVE JURIS-DICTION TO LEGISLATE.

Construing the Act in the manner indicated it applies in respect of employees in Toronto of Eastern Canada Stevedoring Co. Ltd., employed upon or in connection with the operation of its work, undertaking or business, as described in the Order-in-Council, including persons employed to do skilled or unskilled manuel, clerical or technical work, but excluding those referred to in (1) and (11) in s. 2(1)(1) of the Act."

TASCHEREAU, J. AT PAGE 737 -

"Moreover, it is common ground that the operations of the Eastern Canada Stevedoring Company in Toronto during the relevant navigation season consisted exclusively of services rendered in connection with the loading and unloading of ships pursuant to contracts

WITH SEVEN SHIPPING COMPANIES TO HANDLE ALL LOADING AND UNLOADING OF THEIR SHIPS ARRIVING AND DEPARTING DURING THAT SEASON. ALL THESE SHIPS WERE OPERATED ON REGULAR SCHEDULES BETWEEN PORTS IN CANADA AND PORTS OUTSIDE OF CANADA. IT IS, THEREFORE, MY OPINION THAT THIS IS EXCLUSIVELY OF FEDERAL CONCERN UNDER HEAD 10 OF \$.91 AND ALSO HEAD 10 OF \$.92 OF THE B.N.A. ACT."

KELLOCK, J. AT PAGE 753 -

"The Question therefore arises as to whether the work of stevedoring falls within head 10 of s.91. In my opinion, this head of jurisdiction extends to all matters connected with a ship as an instrument of navigation and transport of cargo and passengers. The jurisdiction must extend to stowage and, in my opinion, to loading and discharge also, which operations have been traditionally the responsibility of the ship and carried out under the direction of the master.

COMING TO THE EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED. THE ORDER OF REFERENCE STATES THAT THE OPERATIONS OF THE COMPANY IN CANADA DURING THE NAVIGATION SEASON OF 1954 CONSISTED EX-CLUSIVELY OF SERVICES RENDERED IN CONNECTION WITH THE LOADING AND UNLOADING OF SHIPS, ALL OF WHICH WERE OPERATED ON REGULAR SCHEDULES BETWEEN PORTS IN CANADA AND PORTS OUTSIDE OF CANADA. IT IS ON THE FOOTING OF THE CONTINUANCE OF THIS SITUATION THAT THE QUESTION IS TO BE CONSIDERED. AND | CONSTRUE THE SITUATION THUS DISCLOSED AS INDICATING THAT THE SHIPS IN QUESTION FALL WITHIN THE WORDS "LINES OF STEAM OR OTHER SHIPS ... !, JURISDICTION WITH RESPECT TO WHICH IS VESTED IN THE DOMINION BY S.92(10)(A) AND (B). THERE WOULD BE NO DIFFICULTY, IN MY OPINION, IN HOLDING, ON THE FOOTING OF S.92(10) ALONE. THAT THE UNDERTAKING OF AN INTER-PROVINCIAL OR INTERNATIONAL LINE OF SHIPS WOULD INCLUDE SUCH OPERATIONS AS LOADING AND DISCHARGE OF CARGO AND PASSENGERS, AS WOULD ALSO BE TRUE IN THE CASE OF A DOMINION RAILWAY OR A LINE OF PLANES OR BUSES. HOWEVER. AS THE JURISDICTION OF PARLIAMENT WITH RESPECT TO 'NAVIGATION AND SHIPPING' INCLUDES, AS ALREADY MENTIONED, LOADING AND DISCHARGE OF ALL SHIPPING WHETHER ENGAGED IN LOCAL OR INTERPROVINCIAL OR INTERNATIONAL WATERS, THE PROVINCIAL JURISDICTION CONFERRED BY S.92(10) IS SUBJECT THERETO.

IT MAY WELL BE AS A MATTER OF CONSTRUCTION OF THE ORDER OF REFERENCE THAT THE EMPLOYEES REFERRED TO IN THE FIRST QUESTION ARE THE EMPLOYEES OF THE CLASSES

REFERRED TO IN THE COLLECTIVE AGREEMENT WHICH WAS THE SUBJECT OF THE ORDER OF THE ONTARIO LABOUR RELATIONS BOARD OF THE 14TH OF SEPTEMBER, 1954, NAMELY,

TORONTO SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS
ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND SECURITY
GUARDS.

WITH REGARD TO WHOM THE DISPUTE BETWEEN THE UNIONS REFERRED TO IN THE ORDER OF REFERENCE AROSE. IF, HOWEVER, THE ORDER-IN-COUNCIL IS NOT TO BE CONSTRUED AS CONFINED TO THE NAMED CLASSES, I WOULD BE OF OPINION THAT ALL THE EMPLOYEES OF THE COMPANY IN QUESTION ARE TO BE REGARDED AS PART OF THE TORGANIZATION OR TARRANGEMENT UNDER WHICH THE LINES OF SHIPS HERE CONCERNED ARE TMADE AVAILABLE, ALTHOUGH IN THE EMPLOY OF AN EMPLOYER OTHER THAN THE PROPRIETORS OF THOSE LINES, JUST AS, IN MY OPINION, WOULD BE THE CASE WITH EMPLOYEES OF THE UNDERTAKING OF A DOMINION RAILWAY."

ESTEY, J. AT PAGE 760 -

"THE FACT THAT THE STEVEDORES HERE IN QUESTION WERE EMPLOYEES OF THE EASTERN CANADA STEVEDORING CO. LTD., IS NOT CONCLUSIVE OF, IF, INDEED, MATERIAL TO A CONSIDERATION OF THE QUESTION WHETHER THEY ARE SUB-JECT TO THE LEGISLATIVE JURISDICTION OF THE PARLIAMENT OF CANADA OR THE LEGISLATURE OF A PROVINCE. REFERENCE RE MINIMUM WAGE ACT OF SASKATCHEWAN. 1948 S.C.R. 248: CANADIAN PACIFIC RAILWAY CO. V. A.G. FOR BRITISH COLUMBIA AND A.G. FOR CANADA, 1950 A.C. 122. Such a QUESTION MUST BE RESOLVED BY A CONSIDERATION OF THE NATURE AND CHARACTER OF THE SERVICES IN RELATION TO THE WORKS AND UNDERTAKINGS OF THE LINES OF STEAM SHIPS HERE IN QUESTION. THIS IS NOT, THEREFORE, A CASE SUCH AS TORONTO CORPORATION V. BELL TELEPHONE COMPANY OF CANADA, 1905 A.C. 52, WHERE A COMPANY INCORPORATED UNDER LEGISLATION OF THE PARLIAMENT OF CANADA POSSESSED POWERS, THE EXERCISE OF WHICH WAS BEING INTERFERED WITH UNDER PROVINCIAL LEGISLATION.

IT WILL BE OBSERVED THAT THE FIRST QUESTION IS ASKED IN RESPECT TO THE EMPLOYEES IN TORONTO. THESE ARE ENUMERATED IN THE ORDER IN COUNCIL AND, OTHER THAN STEVEDORES, ARE OFFICERS, OFFICE STAFF AND SUPERINTENDENTS. IN DETERMINING WHAT LEGISLATIVE BODY MAY HAVE LEGISLATIVE JURISDICTION IN RESPECT TO THESE PARTIES IT IS IMPORTANT TO OBSERVE THAT THE SERVICES THEY RENDER ON BEHALF OF THE EASTERN CANADA STEVEDORING CO. LTD., ARE EXCLUSIVELY IN CONNECTION WITH THE LOADING AND UNLOADING OF THE SHIPS PURSUANT TO THE

CONTRACTS ALREADY MENTIONED. IT MUST BE OBVIOUS THAT THEIR WORK, SO RESTRICTED, IS EQUALLY AS ESSENTIAL TO THE LOADING AND UNLOADING AS THAT OF THE STEVEDORES WHO DO THE ACTUAL PHYSICAL WORK.

IT IS IMPORTANT TO OBSERVE THAT IT IS THE WORK OR UNDERTAKING THAT PASSES IN ITS ENTIRETY, BY VIRTUE OF THE PROVISIONS OF \$.92(10)(B) AND \$.91(29) TO THE PARLIAMENT OF CANADA AND IN THIS CONNECTION THE WORDS OF LORD REID ARE APT:

FOR THIS OBJECT THE PHRASE "LINE OF SHIPS" IS APPROPRIATE: THAT PHRASE IS COMMONLY USED TO DENOTE NOT ONLY THE SHIPS CONCERNED, BUT ALSO THE ORGANIZATION WHICH MAKES THEM REGULARLY AVAILABLE BETWEEN CERTAIN POINTS.

CANADIAN PACIFIC RAILWAY Co. v. ATTORNEY-GENERAL OF BRITISH COLUMBIA, 1950 A.C. 122 AT 142."

CARTWRIGHT, J. PAGE 773 -

" IT HAS BEEN SUGGESTED THAT PART I OF THE ACT MAY NOT BE APPLICABLE TO THE OFFICE STAFF OF THE COMPANY EMPLOYED IN TORONTO. IT WILL BE OBSERVED THAT THE MEMBERS OF THE OFFICE STAFF WERE EXCLUDED FROM THE OPERATION OF THE ORDER OF THE ONTARIO LABOUR RELATIONS BOARD OF SEPTEMBER 14. 1954. ANNEXED TO THE ORDER OF REFERENCE AND. PERHAPS FOR THIS REASON. LITTLE INFORMATION IS GIVEN TO US AS TO THEIR DUTIES. IT APPEARS TO ME, HOWEVER, TO BE A REASONABLE ASSUMPTION THAT THE PERFORMANCE OF THEIR DUTIES IS NECESSARY TO THE FUNCTIONING OF THE COMPANY AND ON SUCH ASSUMPTION | AM OF OPINION THAT PART I WOULD APPLY TO THEM EQUALLY WITH THOSE EMPLOYEES WHO ARE DIRECTLY ENGAGED IN THE WORK OF PHYSICALLY MOVING CARGO. THE WORK OF THE OFFICE STAFF IS, ON THE ASSUMPTION MADE ABOVE, AN INTEGRAL PART OF THE OPERATIONS OF THE COMPANY CONSIDERED AS A WHOLE AND THE SOLE PURPOSE OF SUCH OPERATIONS IS THE LOADING AND UNLOADING OF SHIPS PLYING BETWEEN PORTS IN CANADA AND PORTS OUTSIDE OF CANADA."

Applying these reasons of the Court to the facts of the instant case, I must conclude that the employees of the respondent at Toronto for whom the applicant union seeks certification as bargaining agent are employed upon or in connection with a work, undertaking or business carried on for or in connection with a steamship line that is exclusively of federal concern under head 10 of Section 91 and also head 10 of Section 92 of the British North America Act.

I WOULD, THEREFORE, DISMISS THE APPLICATION ON THE GROUNDS THAT THIS BOARD HAS NO JURISDICTION UNDER THE LABOUR RELATIONS ACT IN RESPECT OF THE SAID EMPLOYEES."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"IT IS CLEAR, ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THAT MRS. M. A. PARSONS IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT AND THAT SHE DOES NOT EXERCISE MANAGERIAL FUNCTIONS. IN THE RESULT, THIS PERSON IS INCLUDED IN THE BARGAINING UNIT.

ACCORDING TO THE EVIDENCE IN THE EXAMINER'S REPORT. LEIF JACOBSEN WORKS APPROXIMATELY FIFTY PER CENT OF HIS TIME IN THE OFFICE ISSUING TICKETS AND HANDLING CORRESPONDENCE. THE OTHER FIFTY PER CENT OF HIS TIME IS INVOLVED IN VISITING TRAVEL AGENTS IN ONTARIO AND QUEBEC WITH SOME TRIPS TO THE NORTHERN United States. His duties on these trips require him to promote THE BUSINESS AND TO KEEP THESE AGENTS "INFORMED ABOUT THE SAILING SCHEDULES AND TO SEE THAT THEY HAVE THE PROPER MATERIALS AND LITERATURE ETC. CONCERNING THE SAILINGS OF THE SHIP". IT IS MANIFEST THAT HIS DUTIES ON THESE TRIPS ARE MORE IN THE NATURE OF PROMOTIONAL AND ADVERTISING WORK THAN SALES WORK IN THE USUAL SENSE. HE IS THE ONLY PERSON IN THE OFFICE WHO MAKES THESE TRIPS TO TRAVEL AGENTS. WHILE THE EVIDENCE IN THE REPORT INDICATES THAT HE DOES ON OCCASION TAKE OVER THE OFFICE MANAGER'S "JOB", IT IS PLAIN THAT HE DOES NOT TAKE OVER ANY OF HIS MANAGERIAL OR SUPERVISORY DUTIES. IN ALL THE CIRCUMSTANCES, WE ARE IMPELLED TO INCLUDE LEIF JACOBSEN IN THE BARGAINING UNIT.

FOR THE PURPOSE OF CLARITY, THE BOARD DECLARES THAT THE WORDS "OFFICE EMPLOYEES" INCLUDES ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CLERICAL WORK AND IN THE SELLING OR ISSUING OF TICKETS."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

"| DISSENT FROM THE MAJORITY DECISION IN RESPECT OF THE STATUS OF LIEF JACOBSEN. ON THE EVIDENCE IN THE EXAMINER S REPORT, CONSIDER HE IS PRIMARILY AN OUTSIDE SALESMAN CALLING ON THE TRAVEL AGENCIES AND WOULD HAVE EXCLUDED HIM FROM THE BARGAINING UNIT."

10450-65-R: UNITED TEXTILE WORKERS OF AMERICA LOCAL 462 (APPLICANT) v. LANARK MILLS LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The terminal date for this application fixed by the Registrar, in accordance with section 2 of the Board's Rules of Procedure, was Friday, June 4th, 1965. On Friday, May 28th, the usual notices of the application including form 5, being the notice to employees for posting by the employer and notice of hearing to

BE HELD ON JUNE 16TH, 1965, WERE SENT BY REGISTERED MAIL ADDRESSED TO THE RESPONDENT COMPANY, AT BECKWITH STREET NORTH, SMITHS FALLS, ONTARIO. THE REGISTERED LETTER CONTAINING THE SAID NOTICES WAS NOT RECEIVED BY THE RESPONDENT FROM THE POST OFFICE UNTIL SOMETIME AFTER 4:30 p.m. ON JUNE 2ND. THE NOTICES TO THE EMPLOYEES WERE POSTED IN THE PLANT BY THE RESPONDENT ON THURSDAY, JUNE 3RD.

ON JUNE 3rd, THE RESPONDENT SENT A TELEGRAM TO THE BOARD STATING:-

YOUR REFERENCE 10450-65-R RECEIVED FOUR THIRTY P.M. JUNE SECOND REQUEST EXTENSION TERMINAL DATE DUE TO INSUFFICIENT TIME ALLOWED FOR EMPLOYEE CONSIDERATION NOTICE POSTED JUNE THIRD.

THE REGISTRAT REPLIED TO THE FOREGOING TELEGRAM BY TELEGRAM OF THE SAME DATE STATING:-

RE YOURTEL RE UNITED TEXTILE WORKERS LOCAL 462
AND LANARK MILLS LIMITED STOP | DO NOT HAVE AUTHORITY
TO EXTEND TERMINAL DATE AS REQUESTED STOP YOU SHOULD
RAISE MATTER OF EXTENSION OF TERMINAL DATE AT HEARING
TO BE HELD BY BOARD ON JUNE 16 NEXT.

ON JUNE 15th, THE DAY BEFORE THE HEARING, AND SOME TWO WEEKS FOLLOWING THE POSTING OF THE NOTICES, THE BOARD RECEIVED THE FOLLOWING TELEGRAM:-

RE LANARK MILLS APPLICATION FOR CERTIFICATION PLEASE

BE ADVISED THAT WE WERE INSTRUCTED LAST NIGHT BY

THE SOLICITORS FOR A GROUP OF EMPLOYEES EMPLOYED AT

THE ABOVE NOTED COMPANY TO APPEAR ON THEIR BEHALF AT

THE HEARING HEREIN AND REQUEST THE ESTABLISHMENT OF

A NEW TERMINAL DATE.

UP TO THE DATE OF THIS TELEGRAM, THERE HAD BEEN NO INDICATION OF ANY OPPOSITION ON THE PART OF ANY EMPLOYEES TO THE CERTIFICATION OF THE APPLICANT NOR OF THE FACT THAT ANY OF THEM WANTED AN EXTENSION OF THE TERMINAL DATE.

When the application came on for hearing on June 16th, counsel appeared and advised the Board that he represented solicitors for a certain group of employees of the respondent. He argues that the Board should in the circumstances extend the terminal date in order to give the employees more time to consider their position in the matter and to enable them to decide whether or not they wish to intervene in the application. He submits that the Board should infer from the circumstances that the employees did not have an adequate opportunity during the two days between the posting and the terminal date to decide their course of action. In any event, he argues, that if there is any doubt about the matter, such doubt should be resolved in

FAVOUR OF ENSURING THAT THE EMPLOYEES HAVE BEEN GIVEN AN ADEQUATE OPPORTUNITY BY AN EXTENSION OF THE TERMINAL DATE.

Counsel did not call or tender any evidence to the Board to support his argument that the employees had not had adequate opportunity to consider their position and to take a course of action. Also, no evidence was called or tendered to show that any of the employees had been prejudiced in any way by the two-day posting or that any of them was in fact interested in intervening in the application to oppose it. Indeed, no evidence was called or tendered to identify any employees who were complaining that they had received short-notice of the application. This request for extension of the terminal date, brought as it is in this case, is really in the nature of a request on behalf of an anonymous group of employees who have not, so far as we are aware on any evidence presented to us, complained of anything.

WHILE COUNSEL FOR THE RESPONDENT EMPLOYER ASSOCIATED HIMSELF WITH THE POSITION TAKEN BY COUNSEL APPEARING FOR THE GROUP OF EMPLOYEES THAT THE TERMINAL DATE SHOULD BE EXTENDED, HE STATED THAT THE RESPONDENT WAS NOT MAKING ANY FORMAL MOTION TO THAT EFFECT. THE RESPONDENT DID NOT ATTEMPT ANY EXPLANATION NOR WAS THERE ANY INDICATION GIVEN AS TO WHY THE COMPANY DID NOT RECEIVE THE BOARD SREGISTERED LETTER CONTAINING THE SAID NOTICES, AS ONE MIGHT HAVE EXPECTED, EARLIER THAN JUNE 2ND. WHILE NO EVIDENCE WAS ADDUCED AS TO THE NORMAL OR AVERAGE TIME TAKEN FOR DELIVERY IN THE COMMUNITY OF REGISTERED MAIL FROM TORONTO, WE ARE CONSTRAINED TO TAKE NOTICE OF THE FACT THAT IT IS COMMON KNOW—LEDGE THAT SUCH DELIVERY SHOULD NORMALLY HAVE BEEN EFFECTED IN CONSIDERABLY LESS THAN SIX DAYS TO A COMMUNITY AS CLOSE AS SMITHS FALLS.

IT IS, OF COURSE, SIGNIFICANT TO OUR CONSIDERATION OF THE MOTION FOR AN EXTENSION OF THE TERMINAL DATE THAT THIS APPLICATION INCLUDES ONLY A RELATIVELY SMALL GROUP OF EMPLOYEES WORKING AT ONE LOCATION. IN THIS RESPECT THE REPLY OF THE RESPONDENT INDICATES THAT THERE ARE SOME 32 EMPLOYEES WHO WOULD FALL WITHIN THE DESCRIPTION OF THE UNIT SOUGHT BY THE APPLICANT. ACCORDING TO THE NOTICES POSTED, THESE EMPLOYEES WERE GIVEN TWO DAYS WITHIN WHICH THEY WERE INVITED, IF THEY SO DESIRED, TO FILE A PETITION IN OPPOSITION TO THE APPLICATION. UP TO ONE DAY BEFORE THE HEARING AND DURING A PERIOD OF SOME TWO WEEKS, THERE HAD BEEN NO INKLING WHATSOEVER THAT ANY EMPLOYEES WERE INTERESTED. IN INTERVENING TO OPPOSE THE APPLICATION. COUNSEL ASKS US TO INFER THAT THE REASON WHY EMPLOYEES HAVE NOT SUBMITTED OR TENDERED ANY DOCUMENTARY EVIDENCE IN THE FORM USUALLY REQUIRED OF A PETITION UNDER THE BOARD'S RULES OF PROCEDURE OR OTHERWISE. IS THAT THE EMPLOYEES WOULD HAVE BEEN INDUCED TO BELIEVE BY THE NOTICE TO EMPLOYEES THAT THEIR RIGHTS IN THIS RESPECT WERE FORECLOSED AFTER THE TERMINAL DATE. THIS, IN OUR VIEW, IS A MATTER OF PURE SPECULATION AND NOT OF EVIDENCE. IF WE ARE TO EXTEND A TERMINAL DATE, THERE IS, OF COURSE, EVERY POSSIBILITY THAT SOME EMPLOYEES AND THE UNION AND, IN SOME CASES, THE EMPLOYER WILL SUFFER PREJUDICE BY THE ADDITIONAL DELAY WHICH THIS WOULD INEVITABLY CAUSE IN THE ULTIMATE DISPOSITION OF AN APPLICATION. THIS BOARD, FOR OBVIOUS

REASONS, MUST ENSURE NOT ONLY THAT INTERESTED PARTIES, INCLUDING EMPLOYEES, ARE GIVEN NOTICE OF PROCEEDINGS BEFORE IT, BUT ALSO THAT THE PROCEEDINGS THEMSELVES ARE DISPOSED OF WITH AS MUCH EXPEDITION POSSIBLE CONSISTENT WITH THE EXIGENCIES OF THE CASE AND A PROPER ADJUDICATION OF THE ISSUES. IN ALL THE CIRCUMSTANCES, WE ARE NOT PERSUADED THAT THE BARE FACT ALONE OF THE NOTICES BEING POSTED FOR TWO DAYS PRIMA FACIE INDICATES OR SUGGESTS, AS WE ARE ASKED TO FIND, THAT THE EMPLOYEES DID NOT HAVE AN ADEQUATE OPPORTUNITY, IF THEY HAD SO WISHED, TO SUBMIT A PETITION IN OPPOSITION TO THE APPLICATION.

HAVING REGARD TO THE ABSENCE OF ANY EVIDENCE TO SUGGEST THAT ANY EMPLOYEES WERE PREJUDICED BY THE TIME ALLOWED FOR FILING A PETITION IN OPPOSITION TO THE CERTIFICATION OF THE APPLICANT, AND TO THE FACT THAT WE BELIEVE SUCH EVIDENCE, IF EXISTING, COULD EASILY AND READILY HAVE BEEN PRODUCED, WE ARE, IN THE CIRCUMSTANCES OF THIS CASE, IMPELLED TO DENY THE MOTION TO EXTEND THE TERMINAL DATE."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT

ON FRIDAY, MAY 28th, THE BOARD MAILED TO THE RESPONDENT EMPLOYER BY REGISTERED MAIL NOTICE OF APPLICATION FOR CERTIFICATION AND OF HEARING BEFORE THE ONTARIO LABOUR RELATIONS BOARD (FORM 3). IN THE NORMAL COURSE OF MAIL, IT SHOULD HAVE BEEN RECEIVED BY THE RESPONDENT AT SMITHS FALLS NOT LATER THAN MONDAY MORNING, MAY 31ST, AND COPIES OF NOTICE TO EMPLOYEES OF APPLICATION (FORM 5), IN ACCORDANCE WITH THE BOARD'S INSTRUCTIONS CONTAINED IN FORM 3, SHOULD HAVE BEEN POSTED IN THE MILL ON THE SAME DAY.

THE EVIDENCE ADDUCED AT THE HEARING DISCLOSES THAT FORM 3 WAS NOT RECEIVED BY THE RESPONDENT UNTIL ABOUT 4:30 p.m. ON WEDNESDAY, JUNE 2ND. NOTICE TO EMPLOYEES (FORM 5) WAS POSTED IN THE MILL ON THURSDAY, JUNE 3RD, AT APPROXIMATELY 9:30 A.M. THE TERMINAL DATE FIXED BY THE REGISTRAR WAS FRIDAY, JUNE 4TH. THIS MEANS THAT THE SAID NOTICE REMAINED POSTED FOR ONLY TWO DAYS PRIOR TO THE END OF THE BUSINESS DAY ON THE TERMINAL DATE RATHER THAN FOR FIVE DAYS IF THE NOTICE (FORM 5) HAD BEEN RECEIVED BY THE RESPONDENT ON MONDAY MORNING, MAY 31ST. MOREOVER, EMPLOYEES ABSENT FROM WORK ON JUNE 3RD AND 4TH WOULD NOT HAVE SEEN THIS NOTICE UNTIL AFTER THE TERMINAL DATE, JUNE 4TH.

THERE IS NO EVIDENCE OR EVEN A SUGGESTION OF ANY IMPROPRIETY OR PROCRASTINATION ON THE PART OF THE RESPONDENT IN RESPECT OF THE RECEIVING OF FORM 3 OR THE POSTING OF FORM 5.

IN THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE DIRECTED THAT THE NOTICE TO EMPLOYEES (FORM 5) BE REPOSTED FOR THREE FULL WORKING DAYS AND THE TERMINAL DATE BE EXTENDED ACCORDINGLY.
THIS WOULD GIVE THE EMPLOYEES THE FIVE WORKING DAYS' NOTICE THEY WOULD HAVE HAD IF THE SAID NOTICE HAD BEEN POSTED ON MONDAY MORNING, MAY 31ST, AS CONTEMPLATED AT THE TIME FORM 3 WAS MAILED TO THE RESPONDENT BY THE BOARD ON FRIDAY, MAY 28TH, 1965."

10460-65-R: United Steelworkers of America (Applicant) v. Beaverton Specialties Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"PRIOR TO THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN THIS MATTER THE APPLICANT MADE ALLEGATIONS THAT THE RESPONDENT ENGAGED IN PRACTICES WHICH PROHIBITED THE EMPLOYEES FROM EXPRESSING THEIR TRUE WISHES IN THE REPRESENTATION VOTE AND THE APPLICANT ACCORDINGLY REQUESTED THE BOARD TO GRANT THE RELIEF PROVIDED BY SECTION 7 (5) OF THE LABOUR RELATIONS ACT AND TO DIRECT THAT THE APPLICANT BE CERTIFED AS BARGAINING AGENT WITHOUT THE TAKING OF A REPRESENTATION VOTE. THE BOARD ACCORDINGLY DIRECTED THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE REPRESENTATION VOTE IN THIS MATTER BE SEALED AND THE BALLOTS NOT BE COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

AT THE HEARING FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE APPLICANT PRESENTED EVIDENCE THAT THE SECRETARY-TREASURER. A MAJORITY SHAREHOLDER OF THE APPLICANT, VISITED CERTAIN EMPLOYEES AT THEIR HOMES AND ON ONE OCCASION SPOKE TO TWO EMPLOYEES WHILE AT WORK IN THE PLANT AND SUGGESTED TO THESE EMPLOYEES THAT THE COMPANY WOULD FAVOUR THE EMPLOYEES FORMING THEIR OWN ASSOCIATION RATHER THAN BEING REPRESENTED BY THE APPLICANT TRADE UNION. THE APPLICANT S WITNESSES FURTHER TESTIFIED THAT THIS OFFICER OF THE RESPONDENT FURTHER SUGGESTED THAT MANAGEMENT WOULD BE PREPARED TO DEAL WITH THE EMPLOYEES ASSOCIATION. THE OFFICER OF THE RESPONDENT INDICATED THAT SHE WAS AGAINST THE APPLICANT UNION AND THAT SHOULD THE APPLICANT UNION BECOME CERTIFIED AS BARGAINING AGENT CERTAIN FRINGE BENEFITS ENJOYED BY THE EMPLOYEES MIGHT BE CURTAILED OR REDUCED. ALL THE CONVERSATIONS BETWEEN THE OFFICER OF THE RESPON-DENT AND THE EMPLOYEES TOOK PLACE WHILE THE OFFICER WAS ACCOMPANIED BY AN EMPLOYEE WHO HAD ORIGINATED AND CIRCULATED A PETITION AGAINST THE APPLICANT TRADE UNION WHICH RESULTED IN THE BOARD DIRECTING THAT THE REPRESENTATION VOTE BE TAKEN.

THE BOARD IS OF OPINION THAT THE ONLY PURPOSE WHICH WAS INTENDED BY THE RESPONDENT SOFFICER IN THESE CONVERSATIONS WITH THE EMPLOYEES WAS TO ADVERSELY AFFECT THE APPLICANT SUCCESS IN THE REPRESENTATION VOTE AND THAT HER ACTIVITIES DID IN FACT IN-FLUENCE THE EMPLOYEES IN THE BARGAINING UNIT. THE QUESTION WHICH THE BOARD MUST DETERMINE IS WHETHER SUCH INFLUENCE CAN BE CONSIDERED TO BE UNDUE INFLUENCE AND TO MAKE THIS DETERMINATION THE BOARD MUST DECIDE WHETHER OR NOT THE INFLUENCE CONTAINED ANY THREATS OR PROMISES.

THE BOARD FINDS THAT THE RESPONDENT'S OFFICER THREATENED THE EMPLOYEES WITH REDUCTION OF FRINGE BEBEFITS AND PUT FORTH PROMISES TO THE EMPLOYEES BY INDICATING THAT THE RESPONDENT WAS PREPARED TO DEAL WITH AN EMPLOYEE ASSOCIATION RATHER THAN THE APPLICANT TRADE UNION.

THE BOARD FINDS THAT THE RESPONDENT SOFFICER THREATENED THE EMPLOYEES WITH REDUCTION OF FRINGE BENEFITS AND PUT FORTH PROMISES TO THE EMPLOYEES BY INDICATING THAT THE RESPONDENT WAS PREPARED TO DEAL WITH AN EMPLOYEE ASSOCIATION RATHER THAN THE APPLICANT TRADE UNION.

THE BOARD FURTHER FINDS THAT THE THREATS AND PROMISES
WERE SUCH THAT THE TRUE WISHES OF THE EMPLOYEES WOULD NOT LIKELY
TO BE DISCLOSED BY A REPRESENTATION VOTE.

THE BOARD THEREFORE DIRECTS THAT THE REPRESENTATION VOTE CONDUCTED BY THE BOARD BE SET ASIDE.

THE BOARD IS SATIFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE, AND THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT IS ENTITLED TO THE RELIEF PROVIDED BY SECTION 7 (5) OF THE ACT.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

10522-65-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Canadian General Electric Company Limited (Scarborough Plant) (Respondent). v. United Steelworkers of America (Intervener).

- AND -

10524-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (SCARBOROUGH PLANT) (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

The above applications were consolidated by Board. A representation vote was directed on July 6, 1965, and written reasons for this decision were issued on July 13, 1965, as follows:-

"At the hearing of this application on June 30th, 1965, the counsel for the respondent submitted that the Board Should not accept the evidence of membership filed by either the United Electrical, Radio and Machine Workers of America (UE) (herein-after referred to as the "Electrical Workers") or the United Steelworkers of America (hereinafter referred to as the "Steelworkers") since all of the evidence of the two trade unions was secured prior to the commencement of the respondent's operations on June 14th, 1965, at a time when the respondent had no employ-ees. In support of his submission counsel argues that the word "employees" in section 7 of The Labour Relations Act and section 50 of The Board's Rules of Procedure and Regulations contemplates that, in an application for certification, the persons for whom evidence of membership is submitted by a trade union, have become members of the trade union while in the employ of the respondent

NAMED IN THE APPLICATION. COUNSEL ALSO REFERRED TO THE BOARD'S DECISION IN THE HAMILTON COTTON COMPANY LIMITED CASE (1960) C.C.H. CANADIAN LABOUR LAW CASES 1960 -64, \$\pi\$16,165; C.L.S. 76-675, IN WHICH THE BOARD NOTED THAT ALL THE MEMBERSHIP CARDS FILED BY THE APPLICANT HAD BEEN SIGNED AFTER THE PERSONS FOR WHOM THEY HAD BEEN SUBMITTED HAD BECOME EMPLOYEES OF THE NAMED RESPONDENT. COUNSEL ARGUES THAT THIS FACT WAS A CONSIDERATION IN THE BOARD ACCEPTING THE EVIDENCE OF MEMBERSHIP IN THAT CASE.

WE CAN FIND NOTHING IN THE WORDING OF EITHER SECTION 7 OF THE LABOUR RELATIONS ACT OR SECTION 50 OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS FROM WHICH WE DRAW THE INFERENCE THAT THE EVIDENCE OF MEMBERSHIP FILED IN A CERTIFICATION APPLICATION MUST BE SECURED WHEN THE PERSONS FOR WHOM THE EVIDENCE IS SUBMITTED ARE IN THE EMPLOY OF THE RESPONDENT NAMED IN THE APPLICATION.

WHILE IT MAY BE THAT THE BOARD IN ACCEPTING THE EVIDENCE OF MEMBERSHIP IN THE HAMILTON COTTON COMPANY LIMITED CASE (SUPRA) TOOK INTO ACCOUNT THE FACT THAT THE MEMBERSHIP CARDS FILED BY THE APPLICANT HAD BEEN SIGNED AFTER THE DATE ON WHICH THE PERSONS FOR WHOM THE EVIDENCE WAS SUBMITTED BECAME EMPLOYEES OF THE RESPON-DENT, THE ISSUE BEFORE THE BOARD IN THAT CASE WAS RELATED TO THE SUFFICIENCY OF THE EVIDENCE OF MONEY PAYMENT ON THE MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT. THE OBJECTION RAISED BY THE RESPONDENT IN THE INSTANT APPLICATION IS OF AN ENTIRELY DIFFERENT NATURE. MOREOVER IN THE HAMILTON COTTON COMPANY LIMITED CASE THE BOARD'S DECISION WAS BASED ON A NUMBER OF FACTORS WHICH "ESTAB-LISHED A PATTERN OF EVIDENCE AND CIRCUMSTANCES CONSISTENT WITH THE DESIRE OF THE EMPLOYEES TO HAVE THE APPLICANT AS THEIR CERTI-FIED BARGAINING AGENT<sup>11</sup>. IN OUR VIEW, DECISION IN THE ABOVE CASE CANNOT BE INTERPRETED AS AUTHORITY FOR THE ARGUMENT PUT FORWARD BY COUNSEL FOR THE RESPONDENT.

COUNSEL FOR THE RESPONDENT ARGUES THAT WHILE IT MAY BE ASSUMED THAT THE PERSONS FOR WHOM THE STEELWORKERS SUBMITTED EVIDENCE OF MEMBERSHIP DESIRED TO HAVE THE STEELWORKERS AS THEIR BARGAINING AGENT WHEN THEY WERE EMPLOYEES OF THE JOHN INGLIS CO. LIMITED, IT DOES NOT FOLLOW THAT THE SAME PERSONS DESIRE TO CONTINUE TO BE REPRESENTED BY THE STEELWORKERS WHEN THEY BECAME EMPLOYEES OF THE RESPONDENT. COUNSEL ALSO ARGUES THAT THOSE PERSONS WHO SIGNED MEMBERSHIP CARDS IN THE ELECTRICAL WORKERS DID NOT NECESSARILY WANT TO BE REPRESENTED BY THAT UNION AS EMPLOYEES OF THE RESPONDENT.

WE WOULD POINT OUT THAT, ON THE BASIS OF THE DOCUMENTARY EVIDENCE FILED AT THE HEARING OF THIS APPLICATION, IT IS CLEAR THAT BY THE END OF APRIL 1965, ALL OF THE EMPLOYEES OF THE JOHN INGLIS CO. LIMITED HAD RECEIVED WRITTEN NOTICE THAT AS OF MIDJUNE 1965 THE RESPONDENT WAS EXPECTED TO ACQUIRE THE FACILITIES OF THE FORMER COMPANY. FURTHER, BY THE SAME WRITTEN NOTICE THE EMPLOYEES OF JOHN INGLIS CO. LIMITED WERE INFORMED THAT THE RESPONDENT WAS INTERESTED IN HIRING THOSE EMPLOYEES WITH THE REQUIRED QUALIFICATIONS WHEN IT COMMENCED OPERATIONS AT THE

JOHN INGLIS CO. PLANT AND THE EMPLOYEES OF THE LATTER COMPANY WERE INVITED TO MAKE APPLICATION FOR EMPLOYMENT WITH THE RESPONDENT. WE CAN ONLY ASSUME THAT SINCE ALL THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE STEELWORKERS AND THE ELECTRICAL WORKERS WAS SECURED IN MAY AND JUNE, THAT THE PERSONS WHO JOINED EITHER OF THE TWO UNIONS DID SO IN THE EXPECTATION THAT THE RESPONDENT WOULD BE THEIR NEW EMPLOYER IN THE IMMEDIATE FUTURE. IN THESE CIRCUMSTANCES THE BOARD IS SATISFIED THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY BOTH THE STEELWORKERS AND THE ELECTRICAL WORKERS REPRESENTS THE DESIRE OF THE EMPLOYEES OF THE RESPONDENT TO HAVE EITHER ONE OR OTHER OF THE TWO TRADE UNIONS AS THEIR CERTIFIED BARGAINING AGENT. ACCORDINGLY, THE BOARD . . . FINDS THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE STEELWORKERS AND THE ELECTRICAL WORKERS MET THE BOARD'S REQUIREMENTS.

COUNSEL FOR THE RESPONDENT ALSO SUNMITS THAT EVEN IF THE BOARD ACCEPTS THE EVIDENCE OF MEMBERSHIP FILED BY THE ELECTRICAL WORKERS AND STEELWORKERS, IT SHOULD POSTPONE THE TAKING OF A REPRESENTATION VOTE AS THE RESPONDENT IS IN THE PROCESS OF HIRING AND HAS NOT REACHED ITS FULL COMPLEMENT OF EMPLOYEES. COUNSEL INFORMED THE BOARD THAT THE RESPONDENT ANTICIPATED THAT ULTIMATELY IT MIGHT HAVE SOME 650 PERSONS IN ITS EMPLOY. COUNSEL ADMITTED, HOWEVER, THAT AT THIS TIME THE RESPONDENT HAD NO PLANNED PROGRAM FOR THE INCREASE IN PRODUCTION AND, IN FACT, HAS NOT EVEN FORMULATED DEFINITE PLANS AS TO THE MANNER IN WHICH IT INTENDS TO UTILIZE ALL OF THE PRODUCTION FACILITIES ACQUIRED FROM THE JOHN INGLIS CO. LIMITED. COUNSEL FURTHER STATED THAT THE RESPONDENT HAD NO PLAN OR SCHEDULE FOR THE HIRING OF ADDITIONAL EMPLOYEES AND COULD GIVE THE BOARD NO ESTIMATE AS TO WHEN OR HOW MANY PERSONS WOULD BE EMPLOYED BY THE RESPONDENT IN THE FUTURE.

IN THE EMIL FRANT AND PETER WASELOVICH CASE (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 155-159, ¶16,057; C.L.S. 76-539, THE BOARD RECOGNIZED THAT IN BUILD-UP SITUATIONS IT WAS FACED WITH THE TASK OF BALANCING THE RIGHTS OF PERSONS PRESENTLY EMPLOYED TO COLLECTIVE BARGAINING AND THE RIGHT OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. THE BOARD IN THAT CASE WENT ON TO OUTLINE THE CONSIDERATIONS WHICH IT HAS TAKEN INTO ACCOUNT IN MAKING ITS DETERMINATION IN THE FOLLOWING TERMS:

"Faced with this conflict of interests, the Board has, in the past, in some cases, refused to certify or order an immediate vote — and has directed that a vote be taken at a later date — where, on all the evidence, it appeared to the satisfaction of the Board that the employees did not constitute a substantial and representative segment of the work force to be employed. Of course in such cases it must, be established that there is a real likelihood that

THE INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME AND, IF IT APPEARS THAT THE BUILD-UP DEPENDS ON FACTORS BEYOND THE CONTROL OF THE EMPLOYER SUCH AS THE SALEABILITY OF PRODUCTS, THE PRESENCE OF SUFFICIENT WORKERS OR THE AVAILABILITY OF MATERIALS FOR, SAY, THE PURPOSE OF PLANT EXPANSION, THE BOARD, INSTEAD OF DIRECTING A VOTE TO BE HELD IN THE FUTURE, MAY CERTIFY OR ORDER AN IMMEDIATE VOTE DEPENDING ON THE MEMBERSHIP POSITION OF THE APPLICANT."

HAVING REGARD TO THE ABOVE CONSIDERATIONS AND THE
ADMISSION BY THE RESPONDENT THAT IT HAS NO PLANNED PROGRAM
FOR AN INCREASE IN ITS WORK FORCE, THE BOARD (FINDS). . .

THAT IT WAS NOT SATISFIED THAT THERE WAS A REAL LIKELIHOOD
THAT AN INCREASE IN THE WORK FORCE WOULD TAKE PLACE WITHIN
A REASONABLE PERIOD OF TIME. ACCORDINGLY THE BOARD FOUND
NO REASON TO DEFER THE TAKING OF A REPRESENTATION VOTE TO
A FUTURE DATE."

BOARD MEMBER F. W. MURRAY DISSENTED AND SAID:-

" DISSENT.

While in this case there was only evidence of a general nature as to the expected build-up in the number of employees, I believe there was sufficient evidence submitted by the Respondent that would warrant a short delay in the dtermination of the bargaining agent and in order to avoid a determination by the Board based on the wishes of what is expected to be a small minority of the bargaining unt. The evidence put forward by the Respondent is as follows:

- (1) THE JOHN INGLIS PLANT AT ITS PEAK WAS MANNED BY 1300 EMPLOYEES.
- (2) THE RESPONDENT PURCHASED THE PLANT IN TOTAL, INCLUDING
- (3) IT IS THE INTENTION OF THE RESPONDENT TO UTILIZE TO THE FULLEST EXTENT POSSIBLE PRODUCTION FACILITIES AT THE PLANT AT THE EARLIEST POSSIBLE MOMENT.
- (4) THE RESPONDENT ESTIMATED THAT THE PLANT WOULD REQUIRE A MINIMUM OF 650 EMPLOYEES IN ORDER TO PRODUCE AN ECONOMIC OPERATION HAVING REGARD TO THE INVESTMENT IN PLANT MACHINERY, FACILITIES, ETC.
- (5) THE RESPONDENT EXPECTS TO EMPLOY 126 DIFFERENT JOB CLASSIFICATIONS AT THE PLANT, WHEREAS UP TO THE DATE OF THE APPLICATION ONLY 51 OF THESE JOB CLASSIFICATIONS WERE EMPLOYED.

A REVIEW OF PREVIOUS CASES INVOLVING ANTICIPATED EXPANSION WOULD INDICATE THAT THE BOARD IN THE PAST HAS BEEN RELUCTANT TO DELAY A DETERMINATION, DEPENDING UPON THE MEMBERSHIP POSITION OF THE APPLICANT OR APPLICANTS, BEYOND A PERIOD OF SIX MONTHS, AND NO DOUBT THIS POLICY IS REASONABLE, FACED WITH THE CONFLICT OF INTERESTS THE BOARD HAS BEFORE IT.

Delays have been granted where the evidence has involved specific dates and number of employees expected to be employed on such dates, however, the Emile Frant and Peter Wasselovich Case (1957) CCH Canadian Labour Law Reporter, Transfer Binder \*55-\*59, T16,057; CLS, 76-539, does not, in my opinion, call for definitive evidence as to the Company's planned expansion. Here all that is required is that there is a real likelihood that the increase in the work force will take place within a reasonable period of time. I take this to mean a period of time which will not truly jeopardize the employees right of collective bargaining, but yet at the same time provide an expression of opinion from a representative portion of the anticipated number of employees.

THIS EMILE FRANT AWARD MERELY STATES THAT IF IT APPEARS
THAT THE BUILD-UP DEPENDS ON FACTORS BEYOND THE CONTROL OF THE
EMPLOYER, SUCH AS THE SALEABILITY OF PRODUCTS, PRESENCE OF SUFFICIENT
WORKERS, AVAILABILITY OF MATERIALS, ETC., THE BOARD SHOULD THEN
EITHER CERTIFY OR ORDER AN IMMEDIATE VOTE, DEPENDING ON THE MEMBERSHIP POSITION OF THE APPLICANT. THESE FACTORS WERE NOT IN QUESTION
IN THE INSTANT CASE.

HAVING REGARD TO THE ABOVE CONSIDERATION, . . . I WOULD HAVE RECOMMENDED THAT THE TAKING OF A REPRESENTATION VOTE BE DELAYED FOR A PERIOD OF THREE MONTHS, AND THUS AFFORDED AN OPPORTUNITY FOR A GREATER PROPORTION OF THE EXPECTED NUMBER OF EMPLOYEES TO EXPRESS AN OPINION."

1056-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ROTOR ELECTRIC COMPANY (RESPONDENT) v. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT TAKES THE POSITION THAT THE APPLICATION IS NOT TIMELY AND RELIES ON A DOCUMENT PURPORTING TO BE A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, EXECUTED ABOUT TWO WEEKS BEFORE THE PRESENT APPLICATION WAS MADE. THERE IS NO EVIDENCE TO ESTABLISH THAT THE INTERVENER REPRESENTS OR HAS REPRESENTED THE EMPLOYEES OF THE RESPONDENT.

WHERE NO TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES AFFECTED BY AN APPLICATION, BUT WHERE A "COLLECTIVE AGREEMENT" IS SUBMITTED AS A BAR TO AN APPLICATION DURING THE FIRST YEAR OF THE AGREEMENT SOPERATION, AS IN THE INSTANT CASE, THE BOARD REQUIRES A PARTY RELYING ON THE AGREEMENT

TO ESTABLISH ITS STATUS AND AUTHENTICITY. SEE, FOR EXAMPLE, RAMSAY INDUSTRIES LIMITED, BOARD FILE No. 10042-64-R.

"Collective agreement" is defined by section  $\mathbf{1}(\mathbf{1})(\mathbf{c})$  of The Labour Relations Act as follows:-

"COLLECTIVE AGREEMENT" MEANS AN AGREEMENT IN
WRITING BETWEEN AN EMPLOYER OR AN EMPLOYERS'
ORGANIZATION, ON THE ONE HAND, AND A TRADE UNION
THAT, OR A COUNCIL OF TRADE UNIONS THAT, REPRESENTS
EMPLOYEES OF THE EMPLOYER OR EMPLOYEES OF MEMBERS OF
THE EMPLOYERS' ORGANIZATION, ON THE OTHER HAND,
CONTAINING PROVISIONS RESPECTING TERMS OR CONDITIONS
OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF
THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE
UNION OR THE EMPLOYEES.

IN THE INSTANT CASE THERE IS NO QUESTION AS TO THE STATUS OF THE INTERVENER AS A TRADE UNION, BUT IT HAS NOT BEEN SHOWN THAT, EITHER AT THE TIME THE AGREEMENT WAS ENTERED INTO OR AT ANY SUBSEQUENT TIME, THE INTERVENER IN FACT REPRESENTED THE EMPLOYEES IN THE BARGAINING UNIT. THIS FACT MUST BE ESTABLISHED IN ORDER TO SHOW THAT A COLLECTIVE AGREEMENT EXISTS; MERE PROOF OF THE DOCUMENT, AS IN THE INSTANT CASE, IS NOT PER SE PROOF OF A COLLECTIVE AGREEMENT. THE BOARD THEREFORE FINDS THAT THIS APPLICATION IS PROPERLY BROUGHT PURSUANT TO SECTION 5 (1) OF THE ACT.

IT WAS ARGUED BY COUNSEL FOR THE RESPONDENT THAT, IN CIRCUMSTANCES SUCH AS THESE, AN APPLICATION FOR CERTIFICATION WOULD BE UNTIMELY UNTIL A DECLARATION PURSUANT TO SECTION 45A OF THE ACT HAD BEEN MADE. SECTION 45A PROVIDES A METHOD OF ACHIEVING THE TERMINATION OF BARGAINING RIGHTS OF A TRADE UNION AFTER VOLUNTARY RECOGNITION BY AN EMPLOYER WHERE THE APPLICATION IS BROUGHT DURING THE FIRST YEAR OF THE FIRST COLLECTIVE AGREEMENT BETWEEN THE PARTIES. SUCH AN APPLICATION MIGHT BE BROUGHT IN THE CIRCUMSTANCES OF THE INSTANT CASE. THE PROVISIONS OF THE ACT DEALING WITH TERMINATION OF BARGAINING RIGHTS ARE SET OUT IN SECTIONS 42 - 45a of the Act. Since Section 5(1) PERMITS APPLICATIONS FOR CERTIFICATION TO BE MADE ONLY "WHERE NO TRADE UNION HAS BEEN CERTIFIED - - - AND THE EMPLOYEES IN A UNIT ARE NOT BOUND BY A COLLECTIVE AGREEMENT - - - ", IT FOLLOWS THAT WHERE THERE HAS BEEN CERTIFICATION, OR WHERE THERE EXISTS A BINDING COLLECTIVE AGREEMENT, AND SUBJECT TO SECTION 46, THERE MUST IN SUCH CASES BE A DECLARATION TERMINATING BARGAINING RIGHTS (OR A FINDING OF ABANDONMENT OF BARGAINING RIGHTS) BEFORE AN APPLICATION FOR CERTIFICATION MAY BE MADE. THE INSTANT CASE, HOWEVER, IS NOT OF SUCH A KIND, SINCE THERE HAS BEEN NO CERTIFICATION, AND SINCE IT HAS NOT BEEN SHOWN (AS IT IS ON THE RESPONDENT OR INTERVENER TO SHOW) THAT A BINDING COLLECTIVE AGREEMENT EXISTS. THE PRESENT APPLICATION, THEREFORE, IS TIMELY, EVEN THOUGH NO APPLICATION PURSUANT TO SECTION 45A HAS BEEN MADE. THE PURPOSE OF SECTION 45A WAS TO PROVIDE A REMEDY, NOT PREVIOUSLY AVAILABLE, TO EMPLOYEES SUBJECTED TO THE PROVISIONS OF A "COLLECTIVE AGREEMENT" MADE BETWEEN THEIR EMPLOYER AND A TRADE UNION NOT ENTITLED TO REPRESENT THEM. IT DOES NOT ALTER THE CIRCUMSTANCES IN WHICH AN APPLICATION

FOR CERTIFICATION MAY BE MADE. "

10602-65-R: Local Union 636 of the International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Applicant) v. Security & Investigation Services Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT IS IN THE BUSINESS OF PROVIDING SECURITY SERVICES TO INDIVIDUAL CLIENTS ON A CONTRACT BASIS. THE RESPONDENT PRIMARILY CONTRACTS TO PROVIDE ITS CLIENTS WITH SECURITY GUARDS WHO. BY THEIR PHYSICAL PRESENCE, PROTECT THE CLIENT'S PROPERTY. THE RESPONDENT ALSO OFFERS AN ELECTRICAL PROTECTION SERVICE. MORE PARTICULARLY THE PREMISES OF A CLIENT ARE WIRED AND CONNECTED WITH A CENTRAL CONTROL STATION OPERATED BY THE RESPONDENT. ANY UNAUTHORIZED IN-TRUSION ON PREMISES SO WIRED IS ELECTRICALLY COMMUNICATED TO THE CENTRAL CONTROL STATION. THE RESPONDENT EMPLOYS IN ITS ELECTRICAL PROTECTION SERVICE "INSTALLERS™ WHO DO THE WIRING OF THE PREMISES. "OPERATORS" WHO ARE RESPONSIBLE FOR COM-MUNICATIONS AT THE CONTROL CENTRE AND "PATROL SERGEANTS" WHO OPERATE MOTOR VEHICLES AND ARE IN RADIO COMMUNICATION WITH THE CONTROL CENTRE. THE "OPERATORS" DESPATCH THE "PATROL SERGEANTS" TO ANY LOCATION WHERE TROUBLE HAS BEEN INDICATED AT THE CONTROL CENTRE. THERE IS INTERCHANGE OF JOB FUNCTIONS AMONG THE EMPLOYEES OF THE RESPONDENT WHO FULFIL THE ABOVE THREE OCCUPATIONAL CLASSIFICATIONS. THERE IS NO INTERCHANGE, HOWEVER, BETWEEN THESE EMPLOYEES AND THE SECURITY GUARDS.

IN VIEW OF THE ENTIRELY DIFFERENT NATURE OF THE DUTIES PERFORMED BY THE EMPLOYEES IN THE ELECTRICAL PROTECTION SERVICE AND THE SECURITY GUARDS, AND THE FACT THAT THERE IS NO INTERCHANGE BETWEEN THEM, WE ARE OF THE OPINION THAT THE SECURITY GUARDS AND THE EMPLOYEES IN THE ELECTRICAL PROTECTION SERVICE SHOULD NOT BE INCLUDED IN ONE BARGAINING UNIT. HAVING REGARD, HOWEVER, TO THE DUTIES OF THE "INSTALLERS", "OPERATORS" AND "PATROL SERGEANTS" ALL OF WHICH ARE INTEGRALLY RELATED TO THE ELECTRICAL PROTECTION SERVICE, AND HAVING PARTICULAR REGARD TO THE INTERCHANGE OF JOB FUNCTIONS AMONG THESE EMPLOYEES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS ELECTRICAL PROTECTION SERVICE AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING."

10722-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ATLAS STEELS COMPANY LIMITED (RESPONDENT) V. CANADIAN STEELWORKER'S UNION, ATLAS DIVISION (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS) EMPLOYED BY THE RESPONDENT AT WELLAND, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

THE STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS) ARE CURRENTLY REPRESENTED BY THE INTERVENER AND ARE PART OF AN OVER ALL INDUSTRIAL UNIT WHICH THE INTERVENER HAS REPRESENTED SINCE 1943.

THE APPLICANT ARGUED THAT THE STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS) ARE ENTITLED TO BE REPRESENTED BY THE APPLICANT CRAFT UNION BECAUSE OF THE RECOGNIZED CRAFT STATUS OF STATIONARY ENGINEERS, HOIST-ING ENGINEERS AND THEIR HELPERS (OILERS).

THE RESPONDENT CHALLENGED THE STATUS OF THE APPLICANT TO REPRESENT HOISTING ENGINEERS AND THEIR HELPERS (OILERS). WHILE THE APPLICANT REFERRED THE BOARD IN A GENERAL WAY TO ONE INSTANCE WHERE THE APPLICANT DOES IN FACT REPRESENT EMPLOYEES IN A SIMILAR BARGAINING UNIT, THE APPLICANT HOWEVER, FAILED TO PRODUCE THE COLLECTIVE AGREEMENT TO WHICH IT REFERREL AND THE BOARD HAS BEEN UNABLE TO LOCATE SUCH AN AGREEMENT IN ITS FILES. HOWEVER, FOR THE PURPOSE OF DEALING WITH THE APPLICATION, THE BOARD WILL ASSUME THAT THE APPLICANT DOES HAVE THE NECESSARY STATUS TO CLAIM THE RIGHT TO REPRESENT A CRAFT OF HOISTING ENGINEERS AND THEIR HELPERS (OILERS).

THE APPLICANT CALLED AS WITNESSES, TWO OF TWENTY-SEVEN STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS) IN THE PROPOSED BARGAINING UNIT, WHO TESTIFIED THAT THEY WERE DISSATISFIED WITH THE REPRESENTATION GIVEN TO THEIR CRAFT BY THE INTERVENER BARGAINING AGENT. HOWEVER, THEIR DISSATISFACTION WAS NO MORE OR LESS THAN ONE MIGHT EXPECT TO HEAR FROM TWO MEN IN ANY SIMILAR GROUP OF EMPLOYEES AND THE BOARD IS SATISFIED THAT THE DISSATISFACTION EXPRESSED BY THE TWO WITNESSES DID NOT ARISE FROM THE FAILURE BY THE INTERVENER TO ATTEMPT TO ADEQUATELY REPRESENT THE EMPLOYEES OF THE RESPONDENT WHOM THE APPLICANT SEEKS TO REPRESENT.

THE BOARD FINDS THAT THE STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS) IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY BOUND BY A COLLECTIVE AGREEMENT BE—TWEEN THE RESPONDENT AND THE INTERVENER AND HAVE BEEN BAR—GAINED FOR BY THE INTERVENER AS PART OF AN OVER ALL INDUSTRIAL UNIT SINCE ABOUT 1943. THE BOARD FURTHER FINDS THAT THE COLLECTIVE AGREEMENT COVERING THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED HAS SEPARATE JOB CLASSIFICATIONS AND WAGE SCHEDULES FOR THESE EMPLOYEES AND THESE JOB CLASSIFICATIONS HAVE BEEN ARBITRATED AND AT THE PRESENT TIME AN ARBITRATION IS PENDING AT THE REQUEST OF THE INTERVENER TO UP-GRADE THE JOB CLASSIFICATIONS OF THE STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS). THE BOARD FURTHER FINDS

THAT THE PERSONS WITH WHOM WE ARE HERE CONCERNED HAVE ENJOYED SPECIAL WAGE INCREASES OVER AND ABOVE THE GENERAL WAGE IN-CREASES NEGOTIATED UNDER THE COLLECTIVE AGREEMENTS, HAVE EN-JOYED THE BENEFITS OF PLANT WIDE SENIORITY AND THE MAJORITY OF THE PERSONS WITH WHOM WE ARE HERE CONCERNED OBTAINED THEIR POSITIONS AS A RESULT OF TAKING ADVANTAGE OF THE PLANT WIDE SENIORITY CONTAINED IN THE COLLECTIVE AGREEMENT. THE PERSONS WITH WHOM WE ARE HERE CONCERNED HAVE ENJOYED ALL THE BENEFITS PROVIDED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER INCLUDING THE RIGHT TO BUMP JUNIOR EMPLOY-EES IN OTHER CLASSIFICATIONS IN ORDER TO AVOID LAY-OFFS IN SLACK SEASONS. IN ADDITION THE STATIONARY ENGINEERS AND HOISTING ENGINEERS HAVE BEEN REPRESENTED BY THEIR OWN SHOP STEWARDS AND A STATIONARY ENGINEER AND A HOISTING ENGINEER ARE CURRENTLY SHOP STEWARDS REPRESENTING THE PERSONS WITH WHOM WE ARE HERE CONCERNED. A STATIONARY ENGINEER WAS A MEMBER OF THE CONSTITUTION COMMITTEE AND THE JOB CLASSIFICA-TION COMMITTEE UNDER THE COLLECTIVE AGREEMENT.

HAVING REGARD TO THE DECISION OF THE BOARD IN THE CANADA Foundries and Forgings Case (1961) C.C.H. Canadian Labour Law REPORTER 916,203, C.L.S. 76-735, AND THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE #1501-61-R, AND THE ATLAS STEELS COMPANY, LIMITED CASE, BOARD FILE #6391-63-R AND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER AS EVIDENCED BY THE LENGTH OF CONTINUOUS REPRE-SENTATION BY THE INTERVENER OF THE STATIONARY ENGINEERS, HOISTING ENGINEERS AND THEIR HELPERS (OILERS), THE SEPARATE WAGE SCHEDULES FOR STATIONARY ENGINEERS AND HOISTING ENGINEERS, UNDER THE COLLECTIVE AGREEMENT, THE COMMUNITY OF INTEREST BE-TWEEN THE STATIONARY ENGINEERS, HOISTING ENGINEERS AND THE PRODUCTION EMPLOYEES OF THE RESPONDENT ESPECIALLY WITH RESPECT TO PLANT WIDE SENIORITY PROVIDED FOR IN THE COLLECTIVE AGREE-MENT, THE FACT THAT A STATIONARY ENGINEER HAS BEEN A SHOP STEWARD REPRESENTING THE STATIONARY ENGINEERS AND A HOISTING ENGINEER HAS BEEN A SHOP STEWARD REPRESENTING THE HOISTING ENGINEERS AND THEIR HELPERS (OILERS) AND THAT A STATIONARY ENGINEER HAS BEEN A MEMBER OF THE CONSTITUTION COMMITTEE AND A HOISTING ENGINEER HAS BEEN A MEMBER OF THE JOB CLASSIFICA-TION COMMITTEE, AND ALSO THE OPPOSITION TO THE APPLICATION BY THE RESPONDENT AND THE INCUMBENT TRADE UNION, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION AND REFUSE TO APPLY SECTION 6 (2) IN FAVOUR OF THE APPLICANT.

THE BOARD THEREFORE FINDS THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING IN THE CIRCUMSTANCES OF THIS CASE.

THE APPLICATION IS THEREFORE DISMISSED."

10742-65-R: THE WHYTE EMPLOYEES ASSOCIATION (APPLICANT) v. WHYTE PACKING COMPANY DIVISION OF COPACO (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION.

THE APPLICANT WAS A PARTY TO A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND WHYTE PACKING CO. LIMITED WHICH COMMENCED ON THE 1ST DAY OF JANUARY, 1964 AND WAS TO CONTINUE IN FULL FORCE AND EFFECT UNTIL THE 31ST DAY OF DECEMBER, 1965. IT APPEARED FROM THE APPLICANT'S EVIDENCE THAT THE RESPONDENT PURCHASED THE BUSINESS OF WHYTE PACKING CO. LIMITED ON OR ABOUR MARCH 22ND, 1965 AND SINCE THAT TIME THE RESPONDENT HAS RECOGNIZED THE APPLICANT AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT ITS STRATFORD PLANT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. IT FURTHER APPEARED FROM THE EVIDENCE THAT THE RESPONDENT HAS CONTINUED THE CHECK-OFF PROVISIONS AS PROVIDED FOR UNDER THE COLLECTIVE AGREEMENT ABOVE REFERRED TO AND HAS CONSIDERED ITSELF BOUND BY THE PROVISIONS OF THAT AGREEMENT.

IT WOULD THEREFORE APPEAR FROM THE EVIDENCE OF THE APPLICANT THAT THE RESPONDENT IS A SUCCESSOR EMPLOYER WITHIN THE MEANING OF SECTION 47(a) OF THE LABOUR RELATIONS ACT AND HAS RECOGNIZED THE APPLICANT AS THE BARGAINING AGENT FOR ITS EMPLOYEES, WITH WHOM WE ARE HERE CONCERNED, PURSUANT TO THE PROVISIONS OF SECTION 47(a).

This application for certification is accordingly  $\texttt{Terminated}_{\bullet}^{\ n}$ 

#### INDEXED ENDORSEMENT - TERMINATION

10407-65-R: EIKO KORVEMAKER (APPLICANT) v. UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA (UAW) (RESPONDENT). (GRANTED).

(RE: DOMINION SINKS LIMITED, PETROLIA, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application under section 43 of The Labour Relations Act by an employee of Dominion Sinks Limited for a declaration that the respondent no longer represents the employees in the bargaining unit for which it is bargaining agent.

IN ITS REPLY TO THE APPLICATION THE RESPONDENT NAMED IN THE APPLICATION AS UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA U.A.W. LOCAL 1008 STATED ITS CORRECT NAME AS "INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA (UAW)". THIS STATEMENT WAS MADE ON FORM 21 OVER THE SIGNATURE OF ROBERT WHITE SIGNING FOR THE RESPONDENT. AT THE HEARING IN THIS MATTER MR. WHITE RAISED THE

OBJECTION THAT THE RESPONDENT HAD BEEN INCORRECTLY NAMED. IT IS CLEAR THAT BARGAINING RIGHTS WITH RESPECT TO EMPLOYEES OF DOMINION SINKS LIMITED IN THE BARGAINING UNIT WITH WHICH THE BOARD IS CONCERNED ARE HELD BY THE INTERNATIONAL UNION. IN OUR OPINION. THIS IS A CASE WHERE THERE HAS BEEN A BONA FIDE MISTAKE MADE WITH THE RESULT THAT THE PROPER TRADE UNION HAS NOT BEEN NAMED AS A PARTY. THERE IS NO DOUBT, HOWEVER, AS THE RESPONDENT'S REPLY MAKES CLEAR THAT THE INTERNATIONAL UNION WAS AWARE THAT THIS APPLICATION HAD BEEN MADE AND THAT ITS INTEREST WAS INTENDED TO BE AFFECTED THEREBY. WHERE A RESPONDENT IN ITS REPLY INDICATES ITS CORRECT NAME AS BEING DIFFERENT FROM THAT GIVEN IN THE APPLICATION IT IS THE BOARD'S USUAL PRACTICE, FOLLOWING A HEARING AND SUBJECT TO THE PARTIC-ULAR REPRESENTATIONS WHICH MIGHT BE MADE IN ANY CASE, TO AMEND THE NAME OF THE RESPONDENT. IN THE INSTANT CASE, NO REASON HAS BEEN GIVEN WHY THIS PRACTICE SHOULD NOT BE FOLLOWED. THE BOARD, THEREFORE, PURSUANT TO THE PROVISIONS OF SECTION 78 OF THE LABOUR RELATIONS ACT SUBSTITUTES THE NAME OF THE INTER-NATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA (UAW) FOR THE NAME OF THE RESPONDENT GIVEN IN THE APPLICATION."

#### INDEXED ENDORSEMENTS - PROSECUTION

10561-65-U: CANADIAN GENERAL ELECTRIC COMPANY, LIMITED (APPLICANT) v. J. A. ALEXANDER ET AL (RESPONDENTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for consent to institute a prosecution against the respondents. The applicant alleges that the respondents engaged in a strike contrary to the provisions of section 54 of The Labour Relations Act.

AT THE DATE OF THE HEARING OF THIS APPLICATION THE RESPONDENTS HAD RETURNED TO WORK AND THE STRIKE IN WHICH THEY ADMITTEDLY ENGAGED WAS OVER. AN ORAL AGREEMENT HAD BEEN REACHED WHICH INCLUDED AGREEMENT TO RESOLVE THE GRIEVANCE WHICH HAD GIVEN RISE TO THE STRIKE BY ARBITRATION IF NECESSARY. IT WAS ARGUED BY COUNSEL FOR THE RESPONDENTS THAT THIS AGREEMENT EMBODIED A SETTLEMENT OF ALL OF THE ISSUES AND THAT THE COMPANY HAD IMPLICITLY AGREED NOT TO TAKE ACTION AGAINST THE RESPONDENTS OR TO SEEK TO PROSECUTE THEM. IT WAS FURTHER ARGUED THAT IN THE DISCUSSIONS WHICH HAD TAKEN PLACE THE COMPANY HAD LED THE OFFICIALS OF THE UNION WHICH REPRESENTS THE RESPONDENTS TO BELIEVE THAT NO PROSECUTIONS WOULD BE INSTITUTE.

THE GENERAL POLICY APPLIED BY THE BOARD IN CASES OF THIS SORT IS TO GRANT CONSENT TO THE INSTITUTION OF A PROSECUTION WHERE THE APPLICANT ESTABLISHES A PRIMA FACIE CASE. SUCH A CASE HAS, IN OUR OPINION, BEEN ESTABLISHED WITH RESPECT TO THE

QUESTION WHETHER THE ALLEGED OFFENCE WAS COMMITTED. THE ONUS THEN LIES ON THE RESPONDENTS TO ESTABLISH FACTS WHICH WOULD LEAD THE BOARD IN ITS DISCRETION TO WITHHOLD ITS CONSENT TO THE INSTITUTION OF A PROSECUTION. HAVING REGARD TO ALL OF THE EVIDENCE ON THIS QUESTION THE MAJORITY OF THE BOARD IS OF THE OPINION THAT SUCH FACTS HAVE NOT BEEN ESTABLISHED.

THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENTS, BEING EMPLOYEES
BOUND BY A COLLECTIVE AGREEMENT, DID CONTRAVENE
SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT
THEY DID STRIKE WHILE THE COLLECTIVE AGREEMENT
WAS IN OPERATION."

BOARD MEMBER D. McDERMOTT DISSENTED AND SAID:-

"I DISSENT. I FIND FROM THE EVIDENCE THAT THE UNION ACTING IN GOOD FAITH NEGOTIATED A SETTLEMENT OF ALL ISSUES IN DISPUTE AND REPORTED SAME IN GOOD FAITH TO ITS MEMBERSHIP. A DOCUMENT PURPORTING TO REFLECT THE AGREEMENT OF THE PARTIES WAS IDENTIFIED AND SUBMITTED IN EVIDENCE. COMPANY WITNESSES CONCEDED THAT THE DOCUMENT REPRESENTS THE UNDERSTANDING OF THE PARTIES IN SETTLING THE ISSUES IN DISPUTE.

IT IS WORTHY OF NOTE THAT THE PARTIES ENGAGED IN INTENSIVE NEGOTIATIONS WITH TOP OFFICIALS OF BOTH THE UNION AND THE COMPANY PARTICIPATING. THE MATTER OF POSSIBLE PUNITIVE ACTION AGAINST EMPLOYEES WAS DISCUSSED. POINT NUMBER FOUR OF THE DOCUMENT OUTLINING THE AGREEMENT OF THE PARTIES DEALS WITH THE MATTER OF RESERVING RIGHTS OVER AND ABOVE THE SETTLEMENT. IN MY VIEW, THE COMPANY HAVING FAILED TO RESERVE ITS RIGHT TO INITIATE PROSECUTION PROCEEDINGS IN EFFECT ABANDONED ITS RIGHT TO DO SO. THE UNION MADE A GOOD FAITH AGREEMENT AND WAS ENTITLED TO LOGICALLY CONCLUDE THAT ALL MATTERS WERE SETTLED SAVE AND EXCEPT THE ITEM MENTIONED IN POINT NUMBER FOUR OF THE SETTLEMENT DOCUMENT. THEREFORE, IN MY OPINION, THE COMPANY IS ESTOPPED FROM PROCEEDING FURTHER. AND I WOULD SO DIRECT."

10573-65-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. S. A. ARMSTRONG LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for consent to the institution of a prosecution against the respondent for the alleged violation of section 59(1) of the Labour Relations Act.

IN APPLICATIONS OF THIS SORT, THE BOARD'S POLICY IS TO GRANT CONSENT TO THE INSTITUTION OF A PROSECUTION WHERE THE APPLICANT HAS MADE OUT A PRIMA FACIE CASE THAT THE OFFENCE WAS

COMMITTED. THE EVIDENCE, INCLUDING THAT OF THE RESPONDENT, ESTABLISHES THAT AFTER NOTICE HAD BEEN GIVEN UNDER SECTION 11 AND NO COLLECTIVE AGREEMENT BEING IN OPERATION, THE RESPONDENT, BEFORE THE EXPIRY OF ANY OF THE TIMES REFERRED TO IN SECTION 59 OF THE ACT AND WITHOUT THE CONSENT OF THE APPLICANT TRADE UNION, ADDED AMOUNTS OF EITHER FIVE CENTS OR TEN CENTS PER HOUR TO THE WAGE RATES OF CERTAIN CLASSIFICATIONS OF EMPLOYEES. IT WAS ARGUED, ON BEHALF OF THE RESPONDENT, THAT THIS DID NOT CHANGE THE "BASIC" WAGE RATES AND THUS DID NOT CONSTITUTE A VIOLATION OF SECTION 59.

SINCE IT APPEARS THAT A PRIMA FACIE CASE HAS OTHERWISE BEEN MADE OUT, IT IS NOT NECESSARY FOR THE BOARD TO COMMENT ON THIS ARGUMENT SINCE, AT BEST, IT RAISES AN ARGUABLE QUESTION OF LAW WHICH SHOULD BE LEFT FOR THE TRIAL OF THIS MATTER.

IT WAS FURTHER ARGUED, ON BEHALF OF THE RESPONDENT, THAT THE RESPONDENT HAD NOT INTENDED TO UNDERMINE THE APPLI-CANT'S BARGAINING POSITION BUT HAD RATHER, BY REASON OF ITS INADEQUATE WAGE SCALE BEEN DRIVEN BY NECESSITY TO INCREASE THE AMOUNTS PAID TO EMPLOYEES IN ORDER TO RETAIN THEIR SERVICES. WE ARE NOT PERSUADED, HOWEVER, THAT THIS IS A CASE IN WHICH CONSENT TO THE INSTITUTION OF A PROSECUTION SHOULD NOT BE GRANTED. THE ISSUE OF WAGES IS ONE OF THE MOST IMPORTANT OF COLLECTIVE BARGAINING ISSUES AND CHANGES IN RATES OF WAGES DURING THE COURSE OF COLLECTIVE BARGAIN-ING MAY DRASTICALLY AFFECT THE BARGAINING POSITIONS OF THE PARTIES. WHATEVER THE PREDOMINANT MOTIVE IN EFFECTING THE CHANGES MIGHT HAVE BEEN. THE APPLICANT WAS THE CERTIFIED BARGAINING AGENT OF THE RESPONDENT'S EMPLOYEES AND THE ACTION OF THE RESPONDENT IN EFFECTING CHANGES IN RATES OF WAGES WITHOUT OBTAINING THE CONSENT OF THE APPLICANT STRIKES AT ONE OF THE FUNDAMENTAL PURPOSES OF THE ACT.

THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECU-TION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

That the said respondent did contravene section 59 of The Labour Relations Act in that on or about June 22nd, 1965 it altered the rates of wages of Certain employees without the consent of the applicant trade union, contrary to the provisions of section 59(1) of the Act."

#### INDEXED ENDORSEMENT - SECTION 47A

10359-65-M: Belton-Quinn Lumber Limited (Applicant) v. Local #141 Teamsters, Chauffeurs, Warehousemen and Helpers and Local 89, International Woodworkers of America (Respondents).

"This is an application by the employer for a declaration pursuant to section 47a (5) (b) of The Labour Relations Act concerning which of the two respondent unions shall be the bargaining agent for its employees.

THE APPLICANT EMPLOYER IS A CORPORATION FORMED AS A RESULT OF THE AMALGAMATION OF TWO FORMER COMPANIES NAMELY, QUINN LUMBER AND BUILDERS' SUPPLY COMPANY LIMITED (HEREINAFTER CALLLED QUINN LUMBER) AND GEO. H. BELTON LUMBER COMPANY LIMITED (HEREINAFTER CALLED BELTON LUMBER). IT WAS AGREED BY ALL PARTIES THAT, AI THE TIME OF THE AMALGAMATION, QUINN LUMBER WAS BOUND BY A COLLECTIVE AGREEMENT WITH THE RESPONDENT, LOCAL 141 OF THE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, AND THAT BELTON LUMBER WAS BOUND BY A COLLECTIVE AGREEMENT WITH LOCAL 89 OF THE INTERNATIONAL WOODWORKERS OF AMERICA. THE BARGAINING UNITS IN BOTH OF THESE COLLECTIVE AGREEMENTS COVER ALL EMPLOYEES OF THE COMPANY IN QUESTION, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. NEITHER OF THE BARGAINING UNITS DESCRIBED IN THE AGREEMENTS CONTAINS ANY GEOGRAPHICAL LIMITATION.

AT THE TIME OF THE AMALGAMATION, THE NUMBER OF EMPLOYEES OF QUINN LUMBER IN THE BARGAINING UNIT OF EMPLOYEES OF THAT COMPANY CONSISTED OF SOME 15 PERSONS, WHILE THE NUMBER IN THE BARGAINING UNIT OF EMPLOYEES OF BELTON LUMBER WAS ABOUT 30. ALL OF THESE SOME 45 EMPLOYEES OF THE TWO FORMER COMPANIES HAVE BEEN CONTINUED IN THE EMPLOY OF THE AMALGAMATED CORPORATION. THE OPERATIONS PREVIOUSLY CONDUCTED BY THE TWO FORMER COMPANIES HAVE BEEN COMPLETELY INTEGRATED INTO A SINGLE OPERATION AND ALL OF THE EMPLOYEES OF BOTH FORMER COMPANIES HAVE BEEN INTERMINGLED THEREIN.

IT WAS READILY CONCEDED BY ALL THE PARTIES THAT THE AMALGAMATION OF THE TWO COMPANIES, IN THE CIRCUMSTANCES, CONSTITUTED A DISPOSITION UNDER THE PROVISIONS OF SECTION 47A. ALL PARTIES INDICATED THAT THEY COULD SEE NO BASIS FOR RESOLVING THE DISPUTE AS TO WHICH UNION SHOULD REPRESENT THE EMPLOYEES SAVE BY DIRECTING A REPRESENTATION VOTE TO BE TAKEN AMONG THE EMPLOYEES.

THE BOARD FINDS ITSELF IN ENTIRE AGREEMENT WITH THE PARTIES THAT THE PROPER WAY OF RESOLVING THE ISSUE IN THIS CASE IS BY AFFORDING THE EMPLOYEES AN OPPORTUNITY TO EXPRESS THEIR WISHES CONCERNING WHICH OF THE TWO UNIONS THEY DESIRE TO REPRESENT THEM AS THEIR COLLECTIVE BARGAINING AGENT WITH THEIR NEW EMPLOYER."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"Pursuant to section 47a (5) of the Act, the Board Declares that Local 89, International Woodworkers of America is the exclusive Bargaining agent for all of the employees in the Bargaining unit described as follows:-

ALL EMPLOYEES OF BELTON-QUINN LUMBER LIMITED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

#### INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10075-64-R: Local 280 of the Hotel & Restaurant Employee's and Bartenders' Inter-National Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Harold Gross Limited (Respondent)

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for reconsideration of the Board's decision in this matter dated March 19th, 1965. By its certificate of that date the Board certified the applicant as bargaining agent for all full time and part time tapmen, bartenders, beverage waiters, bar-boys and improvers in the employ of the respondent at its Town Tavern in Toronto with certain exceptions not here material. At that time the persons in the bargaining unit so described were all male persons. Under the provisions of the Legislation and regulations governing the serving of alcoholic beverages in effect at that time, female persons were not permitted to perform the tasks falling within the scope of the occupations mentioned in the Board's certificate and no female persons were employed in the bargaining unit. At that time as well and by reason of the Legislation and regulations above referred to, the applicant had not admitted any female persons into membership.

SINCE THE ISSUANCE OF THE BOARD S CERTIFICATE THE PARTIES HAVE ENGAGED IN COLLECTIVE BARGAINING BUT NO COLLECTIVE AGREEMENT HAS BEEN REACHED.

THE LEGISLATION AND REGULATIONS RESPECTING THE SERVING OF ALCOHOLIC BEVERAGES HAVE RECENTLY BEEN AMENDED AND FEMALE PERSONS ARE NOW PERMITTED TO PERFORM TASKS COMING WITHIN THE SCOPE OF THE OCCUPATIONS WHICH CONSTITUTE THE BARGAINING UNIT. THE CONSTITUTION AND BY-LAWS OF THE APPLICANT DO NOT EXCLUDE FEMALE PERSONS FROM MEMBERSHIP AND IT IS ADMITTED THAT THE APPLICANT WILL ADMIT SUCH PERSONS INTO MEMBERSHIP AND THE APPLICANT HAS GIVEN ITS UNDERTAKING TO THAT EFFECTTO THE BOARD. THE APPLICANT, THEREFORE, IS CAPABLE OF REPRESENTING FEMALE AS WELL AS MALE PERSONS PERFORMING TASKS FALLING WITHIN THE SCOPE OF THE OCCUPATIONS REFERRED TO IN THE BOARD'S CERTIFICATE AND THE BOARD SO FINDS.

THE BOARD'S CERTIFICATE CONFERS BARGAINING RIGHTS UPON THE APPLICANT NOT WITH RESPECT TO A PARTICULAR GROUP OF INDIVIDUALS BUT RATHER WITH RESPECT TO THE CLASS OF PERSONS IN THE OCCUPATIONS THERE DESCRIBED EVEN THOUGH MEMBERSHIP OF THIS CLASS MAY VARY FROM TIME TO TIME. EXCEPT WHERE THE CIRCUMSTANCES CLEARLY INDICATE OTHERWISE, THE SEX OF PERSONS PERFORMING TASKS WITHIN THE SCOPE OF THESE OCCUPATIONS IS NOT MATERIAL. THE BARGAINING UNIT, THEREFORE, MAY INCLUDE FEMALE AS WELL AS MALE PERSONS. IN PARTICULAR, THE TERM "BEVERAGE WAITERS" MAY REFER TO ANY PERSONS, MALE OR FEMALE, WHO PERFORM THE TASKS OF WAITERS WITH RESPECT TO ALCOHOLIC OR OTHER BEVERAGES.

The endorsement of the record in this matter dated March 19th, 1965 is amended by adding thereto the following paragraph.

FOR PURPOSES OF CLARITY, THE BOARD
DECLARES THAT THE BARGAINING UNIT DESCRIBED
IN PARAGRAPH 3 ABOVE MAY INCLUDE FEMALE AS
WELL AS MALE PERSONS."

### STATISTICAL TABLES FOR AUGUST 1965

TABLE I

## APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

			Number Filed		
		August 1965	1st 5 Months	of Fiscal Year. 1964-65	
to	CERTIFICATION	72	431	354	
11.	DECLARATION TERMINATING BARGAINING RIGHTS	5	28	45	
111.	Declaration of Successor Status	600	5	1	
1 V.	Declaration That Strike Unlawful	3	28	21	
٧.	Declaration That Lock- Out Unlawful	-	-	5	
V1.	Consent to Prosecute	5	30	42	
VIî.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	10	57	68	
VIII.	Miscellaneous	2	26	7	
	TOTAL	97	605	543	

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	AUGUST 1ST 5 MONTHS OF FISCAL YEAR. 1965 1965-66 1964-65		
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	90 556 453		

TABLE !!!

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF			
		AUGUST 1ST 1965	5 Months of 1965-66	FISCAL YR. 1964-65	
1.	CERTIFICATION	68	438	345	
11.	DECLARATION TERMINATING BARGAINING RIGHTS	Lţ-	25	52	
111.	Declaration of Successor Status		9	Ц.	
1 V •	Declaration That Strike Unlawful	3	24	17	
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	_	~	3	
VI	CONSENT TO PROSECUTE	6	23	31	
V11.	Complaint of Unfair Practice in Employment (Section 65)	8	56	65	
VIII.	Miscellaneous	3	44	8	
	TOTAL	92	619	525	

TABLE IV

## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION

		NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
		1965	lst <b>5</b> MTHS F 1965-66	1964-65	August 1:		Fiscal Yr. 1964-65
1.	CERTIFICATION						
	GRANTED Dismissed Withdrawn	42 14 12	318 82 38	245 67 33	1166 454 176	9168 3190 2608	8838 3933 1855
	TOTAL	68	438	345	1796	14966	14626
11.	TERMINATION OF BARGAINING RIGHTS						
	GRANTED DISMISSED WITHDRAWN	2 2 -	10 13 2	37 13 2	308 70 —	1034 302 73	344 273 82
	TOTAL	4	25	52	378	1409	699

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY
AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE
BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR
CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR
APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			NUMBER OF APPLICATION			
			August 1st 1965	5 Months 1965-66	FISCAL YEAR. 1964-65	
111.	DECLARATION THAT STRIKE UNLAWFUL					
	Granted Dismissed Withdrawn		<u>-</u> <u>3</u>	6 3 15	8 3 6	
		TOTAL	<u>3</u>	24	17	
1 V.	Declaration That Lockou	Ţ				
	Granted Dismissed Withdrawn		- - -	<u>-</u>	1 2	
		TOTAL	Gain Seminated Seminated	Carlo Americana Marketoner	3	
٧.	CONSENT TO PROSECUTE					
	GRANTED DISMISSED WITHDRAWN		3 -3	4 3 16	4 8 <u>19</u>	
		TOTAL	_6	<u>23</u>	<u>31</u>	

TABLE V

## REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

### OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES				
	August 1s 1965	т 5 М <b>онтнs</b> F 1965-66	1964-65		
CERTIFICATION AFTER VOTE*					
Pre-Hearing Vote	2	9 14	10 8		
BALLOTS NOT COUNTED	100	-	-		
DISMISSED AFTER VOTE					
PRE-HEARING VOTE POST-HEARING VOTE	<del>-</del> 4	3 15	4 28		
BALLOTS NOT COUNTED	-	2			
TOTAL	6	43	50		

<sup>\*|</sup>NCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

#### TABLE VI

## REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

#### BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES			
	August :	1965-66	FISCAL YEAR 1964-65	
*Respondent Union Successful Respondent Union Unsuccessful	2	10	7	
TOTAL	2	11	7	

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



## ONTARIO LABOUR RELATIONS BOARD



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#### APPLICATION'S DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### DURING SEPTEMBER 1965

#### BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

#### No VOTE CONDUCTED

9880-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Chrysler Canada Ltd. (Respondent).

IN THIS CASE THE BOARD FOUND TWO BARGAINING UNITS TO BE APPROPRIATE.
UNIT #2 WAS CERTIFIED WITHOUT A REPRESENTATIVE VOTE AS FOLLOWS:-

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PARTS DEPOT IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECURITY GUARDS, PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 28th, 1961, WHEREIN THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND PERSONS COVERED BY BARGAINING UNIT #1."

(2 EMPLOYEES IN THE UNIT).

Unit #1, which was dismissed after a representation vote, is entered on page 403 of this Report.

10106-64-R: United Packinghouse Food and Allied Workers (Applicant) v. Norfish, Limited (Respondent) v. Canadian Poultry Workers Union (Intervener) v. General Truck Drivers' Union, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT DOVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (118 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 414 ).

10142-65-R: Wood, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 (APPLICANT) v. DOWNSVIEW LATHING CO. LTD. (RESPONDENT).

Unit: "ALL Lathers and Lathers' apprentices in the employ of the respondent within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the Easterly Limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman."

(35 employees in the unit).

10348-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. S. S. KRESGE COMPANY LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN WHITBY TOWNSHIP, SAVE AND EXCEPT DEPARTMENT MANAGERS AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (72 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 423 ).

10438-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 869, OTTAWA, CANADA (APPLICANT) v. METCALFE REALTY COMPANY LIMITED (RESPONDENT) v. CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION No. 1, N.C.C.L. (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT 88 METCALFE STREET, 75 ALBERT STREET AND 123 SLATER STREET, OTTAWA, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (9 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 426 ).

10495-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local No. 506 (Applicant) v. Beer Precast Concrete Limited (Respondent).

UNIT: "ALL EMPLOYEES WORKING AT AND OUT OF THE RESPONDENT'S PLANT IN SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, MANAGEMENT TRAINES ENGAGED ON A FORMAL TRAINING PROGRAM, AND PERSONS BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT."

(42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS AND AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT FOUR NAMED PERSONS CLASSIFIED AS MANAGEMENT TRAINEES ARE EXCLUDED FROM THE BARGAINING UNIT.

10618-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. SQUARE D COMPANY CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARIES TO DEPARTMENT MANAGERS, PERSONNEL DEPARTMENT, ESTIMATORS, METHODS ANALYSTS AND METHODS MEN, ENGINEERS AND ENGINEERING ASSISTANTS AND TECHNICIANS, FIELD SALES AND SALES TRAINEE PERSONNEL, LABORATORY TECHNICIANS, PLANT NURSE, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (79 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10624-65-R: International Brotherhood of Painters, Decorators and Paperhangers of America (Applicant) v. Park Plaza Corporation Limited (Respondent).

Unit: "ALL JOURNEYMEN AND APPRENTICE PAINTERS IN THE EMPLOY OF THE RESPONDENT AT ITS PARK PLAZA HOTEL, TORONTO." (4 EMPLOYEES IN THE UNIT).

10680-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. ARMCO DRAINAGE & METAL PRODUCTS OF CANADA LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(9 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 431 ).

10682-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 3233, Affiliated with the Carpenters' District Council of Toronto and Vicinity (Applicant) v. Arch Construction Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10686-65-R: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Applicant) v. Vail's Fabric Care Ltd. (Respondent) v. International Union of Operating Engineers Local 869 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CARLING AVENUE PLANT IN OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM, DRIVER SALESMEN, DRIVERS, OFFICE STAFF, COUNTER CLERKS, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND ALL PERSONS BOUND BY SUBSISTING COLLECTIVE AGREEMENTS AND CERTIFICATES OF THIS BOARD." (110 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"APART FROM ANY OTHER CONSIDERATION AFFECTING ITS ACCEPTABILITY AS EVIDENCE OF THE TRUE WISHES OF THE EMPLOYEES, IT IS MANIFEST THAT THE DOCUMENT FILED IN OPPOSITION TO THE UNION'S APPLICATION FOR CERTIFICATION CONSTITUTES NO MORE THAN A MERE ROUND—ROBIN LIST OF SIGNATURES ON A BLANK PIECE OF PAPER. THE WRITTEN PREAMBLE CONTAINED ON ANOTHER PIECE OF PAPER WAS NOT AFFIXED TO THE LIST OF SIGNATURES UNTIL LATER AND WAS DONE SO WITHOUT THE KNOWLEDGE OR CONSENT OF THE SIGNATORIES. THE DOCUMENT IS PLAINLY NOT EVIDENCE IN WRITING AS REQUIRED BY SECTION 50 OF THE BOARD'S RULES OF PROCEDURE OF ANY OBJECTION BY EMPLOYEES TO THE CERTIFICATION OF THE APPLIME

CANT. IN THE RESULT, THE LIST OF SIGNATURES CANNOT BE TAKEN AS QUALIFYING OR WEAKENING THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION."

10687-65-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. VINCE'S FOODS OF THE WORLD LIMITED (RESPONDENT).

 $\frac{\text{Unit}}{\text{I.G.A.}}$  Foodliner stores at Midland, save and except persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (3 employees in the unit).

10688-65-R: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. VINCE'S FOODS OF THE WORLD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS 1.G.A. FOODLINER STORES AT MIDLAND REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

10689-65-R: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. VINCE'S FOODS OF THE WORLD LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS 1.G.A. FOODLINER STORES AT MIDLAND, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD IN EACH OF THE ABOVE THREE APPLICATIONS 10687-65-R; 10688-65-R and 10689-65-R as follows:-

"THE BOARD HEARD EVIDENCE CONCERNING THE ORIGINATION AND CIRCULATION OF A DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION TO THE APPLICATION BY EMPLOYEES OF THE RESPONDENT. BEFORE CONCLUDING THAT SUCH A DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE, THE BOARD REQUIRES FULL DETAILS CONCERNING THE PREPARATION AND DRAFTING OF THE DOCUMENT AND THE CONTROL EXERCISED OVER IT, AS WELL AS OF ITS CIRCULATION AND MANNER OF EXECUTION. IN THE INSTANT CASE, THE REPRESENTATIVE OF THE OBJECTORS WAS UNABLE TO GIVE ANY EVIDENCE RESPECTING THE DRAFTING OR PREPARATION OF THE DOCUMENT IN QUESTION. HAVING REGARD TO ALL OF THE EVIDENCE AND THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE DOCUMENT IN QUESTION, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE. "

10692-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Metcalfe Realty Company Limited (Respondent) v. Canadian Construction Workers' Union Division No. 1, N.C.C.L. (Intervener).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWN-SHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant is applying for certification for a unit of employees of the respondent consisting of all carpenters and carpenters' apprentices. The intervener submits that the application is untimely by reason of the fact that the above employees of the respondent are already covered by an existing collective agreement between the respondent and the intervener which is in effect from June 15th, 1965 to April 30th, 1967. The applicant challenges the validity of the collective agreement as it relates to the employees which it is seeking in this application on the grounds that at the time the collective agreement was entered into by the parties the intervener did not represent a majority of the carpenters and carpenters' apprentices.

The respondent and the intervener were parties to two previous collective agreements dating back to 1961. By the scope clause in both of these agreements the respondent recognized the intervener as the bargaining agent for "all employees of the company save and except foremen, persons above the rank of foreman, office staff, carpenters and their apprentices, bricklayers and their apprentices, and excavating operators". In the scope clause of the current collective agreement, however, the exclusion of "carpenters and their apprentices, bricklayers and their apprentices, and excavating operators" was deleted from the description of the bargaining unit. In other words, when the respondent and intervener entered into their current agreement on June 15th of this year, they included the above three classifications of employees into the bargaining unit.

SINCE THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION WERE INCLUDED IN THE BARGAINING UNIT FOR THE FIRST TIME IN THE CURRENT COLLECTIVE AGREEMENT, AND THE APPLICANT HAS CHALLENGED THE VALIDITY OF THEIR INCLUSION, THE ONUS RESTS ON THE RESPONDENT AND THE INTERVENER TO SATISFY THE BOARD THAT AT THE TIME THEY ENTERED INTO THE AGREEMENT THE INTERVENER REPRESENTED A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT. THIS MEANS THE PARTIES MUST ESTABLISH THAT ON THE RELEVANT DATE THE INTERVENER REPRESENTED A MAJORITY OF THE EMPLOYEES IN THE OVERALL BARGAINING UNIT COVERED BY THE CURRENT COLLECTIVE AGREEMENT. IT IS NOT NECESSARY, HOWEVER, FOR THE INTERVENER TO ESTABLISH THAT IT REPRESENTED A MAJORITY OF THE EMPLOYEES IN THE JOB CLASSIFICATIONS THAT WERE INCLUDED IN THE BARGAINING UNIT FOR THE FIRST TIME IN THE EXISTING AGREEMENT.

THE "UNION SECURITY AND CHECK-OFF" PROVISION OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH WAS IN EFFECT FROM

June 27th, 1963 to April 30th, 1965 provides that the employees of the respondent are required to join the union and sign dues deduction authorizations at the time of hiring. In other words, at the time the current collective agreement was entered into all employees in the bargaining unit covered by the prior agreement were represented by the intervener trade union. Since the "carpenters and their apprentices, bricklayers and their apprentices, and excavating operators" were not covered by the 1963 collective agreement it was not necessary for these categories of employees to be members of the intervener union.

THERE IS NO EVIDENCE BEFORE THE BOARD AS TO HOW MANY EMPLOYEES WERE IN THE EMPLOY OF THE RESPONDENT IN THE BAR-GAINING UNIT COVERED BY THE CURRENT COLLECTIVE AGREEMENT ON THE DATE THAT THE AGREEMENT WAS ENTERED INTO BY THE PARTIES. FURTHER. WHILE THERE IS EVIDENCE THAT ALL THE EMPLOYEES OF THE RESPONDENT COVERED BY THE PREVIOUS COLLECTIVE AGREEMENT ARE MEMBERS OF THE INTERVENER UNION. THERE IS NO EVIDENCE AS TO HOW MANY CARPENTERS. BRICKLAYERS AND EXCAVATING OPERATORS WERE IN THE EMPLOY OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE CURRENT COLLECTIVE AGREEMENT AND THERE IS NO EVIDENCE BEFORE US AS TO HOW MANY OF THE EMPLOYEES IN THESE THREE CATEGORIES WERE MEMBERS OF THE INTERVENER UNION. IN THESE CIRCUMSTANCES, THE BOARD IS NOT ABLE TO MAKE A FINDING THAT THE INTERVENER REPRESENTED A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT IN THE CURRENT COLLECTIVE AGREEMENT. THE PARTIES, THEREFORE, HAVE FAILED TO DISCHARGE THE ONUS UPON THEM TO SATISFY THE BOARD THAT THE AGREEMENT BETWEEN THEM IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1 (1)(c) of The Labour Relations Act. The agreement, accordingly. IS NOT A BAR TO THE INSTANT APPLICATION."

10696-65-R: United Brotherhood of Carpenters and Joiners of America Local 2466 (Applicant) v. Pillar Construction Limited (Respondent) v. Pillar Construction Limited Employees Association (Intervener).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW WITH THE EXCEPTION OF THE TOWNSHIP OF MCNAB, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant is applying for a unit of employees of the respondent consisting of carpenters and carpenters' apprentices. The intervener, Pillar Construction Limited Employees Association (hereinafter referred to as the "Association") submits that the application is untimely by reason of the fact that the employees for whom the applicant is seeking certification are already covered by a collective agreement between the respondent and the Association effective from March 3rd, 1965 to March 3rd, 1967. The applicant challenges the validity of the collective agreement between the Association and the respondent and submits that it is not a bar to this application.

At the hearing of the application on August 17th, 1965, Stanley Sholea the President of the Association gave viva voce evidence with regard to the origination of the Association. There was also filed with the Board the minutes of the organizational meeting which took place on February 11th, 1965, a copy of the constitution of the Association, and a copy of a collective agreement between the Association and the Respondent Dated February 19th, 1965.

Sholea testified that he requested and received the permission of the president of the respondent to post a notice of the organizational meeting on the company's premises. Sholea's evidence is that the president was aware of the purpose of the notice. The meeting was held off the company premises at 137 Pretoria Street in Ottawa, after working hours. No members of management were in attendance at the February 11th meeting.

AT THE OUTSET OF THE MEETING ON FEBRUARY 11TH, SHOLEA WAS APPOINTED CHAIRMAN AND ANOTHER EMPLOYEE WAS APPOINTED SECRETARY. THE MEETING WAS THEN ADJOURNED TO PERMIT THOSE EMPLOYEES PRESENT WHO HAD NOT MADE APPLICATION FOR MEMBERSHIP IN THE ASSOCIATION TO COMPLETE APPLICATION FORMS. SHOLEA TESTIFIED THAT SOME APPLICATIONS FOR MEMBERSHIP IN THE ASSOCIATION WERE COMPLETED BY EMPLOYEES A COUPLE OF DAYS PRIOR TO THE FEBRUARY 11TH MEETING. THE MEETING WAS THEN RECONVENED AND A MOTION WAS ADOPTED ACCEPTING THE NINE APPLICANTS FOR MEMBERSHIP INTO THE ASSOCIATION. SINCE THE MINUTES OF THE MEETING ONLY RECORD THAT SIX EMPLOYEES WERE IN ATTENDANCE, WE MUST ASSUME THAT APPLICATIONS FOR MEMBERSHIP WERE COMPLETED BY THREE EMPLOYEES PRIOR TO THE MEETING WHO WERE NOT IN ATTENDANCE AT THE MEETING.

THE SIX EMPLOYEES AT THE MEETING THEREUPON ELECTED AN EXECUTIVE CONSISTING OF A PRESIDENT, VICE-PRESIDENT AND SECRETARY-TREASURER. FOLLOWING THE ELECTION OF OFFICERS, THE PROPOSED CONSTITUTION OF THE ASSOCIATION WAS PUT BEFORE THE MEETING AND WAS ADOPTED. THOSE PRESENT AT THE MEETING THEN PASSED A MOTION NAMING A BARGAINING COMMITTEE COMPOSED OF THE THREE ELECTED MEMBERS OF THE EXECUTIVE. A FURTHER MOTION DIRECTED THE BARGAINING COMMITTEE TO APPROACH THE RESPONDENT COMPANY FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT. THE BARGAINING COMMITTEE MET WITH REPRESENTATIVES OF THE RESPONDENT ON TWO OCCASIONS AND ON FEBRUARY 19TH, 1965, THE PARTIES ENTERED INTO A COLLECTIVE AGREEMENT.

THE CONSTITUTION OF THE ASSOCIATION INTER ALIA PROVIDES THAT THE OFFICERS MAY CALL SPECIAL GENERAL MEETINGS OF THE ASSOCIATION BY GIVING NOTICE EITHER BY MAILING SUCH NOTICE TO EACH MEMBER OR BY POSTING NOTICES IN CONSPICUOUS PLACES IN THE PLACE OF BUSINESS OF THE RESPONDENT. THE CONSTITUTION FURTHER PROVIDES THAT MEMBERS FAILING TO PAY THE PRESCRIBED DUES ON OR BEFORE THE DAY FIXED FOR PAYMENT SHALL HAVE THEIR NAMES POSTED BY THE SECRETARY—TREASURER AS DEFAULTERS IN CONSPICUOUS PLACES IN THE PLACE OF BUSINESS OF THE COMPANY. THE CONSTITUTION ALSO PROVIDES THAT MEMBERSHIP IN THE ASSOCIATION SHALL CEASE ON TERMINATION OF EMPLOYMENT WITH THE RESPONDENT.

THE ORGANIZATIONAL MEETING TO ESTABLISH THE ASSOCIATION WAS HELD OFF THE PREMISES OF THE RESPONDENT, AFTER WORKING HOURS, AND NO MEMBERS OF MANAGEMENT WERE IN ATTENDANCE AT THE MEETING. THE FACT THAT SHOLEA DID SEEK AND SECURE THE PERMISSION OF THE RESPONDENT TO POST THE NOTICE OF THE MEETING ON COMPANY PREMISES, IN OUR OPINION, DOES NOT, STANDING BY ITSELF, CONSTITUTE MANAGEMENT SUPPORT FOR THE ASSOCIATION WITHIN THE MEANING OF SECTION 10 OF THE LABOUR RELATIONS ACT. FURTHER, SINCE THE PROVISIONS IN THE CONSTITUTION FOR THE POSTING OF NOTICES ON THE RESPONDENT'S PREMISES WERE ADOPTED UNILATERALLY BY THE EMPLOYEES IN ATTENDANCE AT THE ORGANIZATIONAL MEETING, AND THERE IS NO EVIDENCE THAT THE RESPONDENT GAVE APPROVAL TO THIS ARRANGEMENT, THEY CANNOT BE INTERPRETED AS MANAGEMENT SUPPORT FOR THE ASSOCIATION.

SINCE THE PRIMARY OBJECT OF THE ASSOCIATION IS TO PROMOTE COOPERATION, HARMONY AND EFFICIENCY IN OTHER RELATIONSHIPS BETWEEN THE EMPLOYEES AND THE RESPONDENT, IT IS OBVIOUS THAT MEMBERS OF THE ASSOCIATION ARE ONLY INTERESTED IN BEING MEMBERS WHILE THEY ARE IN THE EMPLOY OF THE RESPONDENT. ACCORDINGLY, WE TAKE NO OBJECTION TO THE PROVISION IN THE CONSTITUTION THAT MEMBERSHIP IN THE ASSOCIATION CEASES ON TERMINATION OF EMPLOYMENT. IN OUR OPINION, THE ASSOCIATION IS ABLE TO PROTECT ITS MEMBERS IN THE SAME MANNER AS ANY OTHER BARGAINING AGENT. (SEE RHEEM OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1963, p. 427).

IN PAST DECISIONS, WHERE MEMBERSHIP IN AN ORGANIZATION HAS BEEN SECURED FROM EMPLOYEES PRIOR TO THE TIME THAT THE ORGANIZATION CAME INTO EXISTENCE, THE BOARD HAS NOT ACCEPTED SUCH EVIDENCE AS VALID EVIDENCE OF MEMBERSHIP UNLESS THOSE EMPLOYEES DID SOME ACT SUBSEQUENT TO THE COMING INTO EXISTENCE OF THE ORGANIZATION THAT WAS CONSISTENT WITH OR CONFIRMATORY OF THEIR MEMBERSHIP IN THE ORGANIZATION (SEE STEDMAN BROTHERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1962. P. 386: M. LOEB LIMITED CASE, O.L.R.B. MONTHLY REPORT, May, 1962, P. 69). IN THE INSTANT CASE, WE FIND THAT BY NAMING A BARGAINING COMMITTEE COMPOSED OF THE ELECTED EXECUTIVE OFFICERS OF THE ASSOCIATION AND DIRECTING THEM TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE RESPONDENT, ALL OF WHICH WAS DONE IMMEDIATELY AFTER THE ADOPTION OF THE CONSTITUTION, THE EMPLOYEES IN ATTENDANCE AT THE MEETING ON FEBRUARY 11TH PER-FORMED AN ACT CONSISTENT WITH THEIR MEMBERSHIP IN THE ASSOCI-ATION. THIS FINDING, HOWEVER, HAS NO APPLICATION TO THE THREE EMPLOYEES WHO JOINED THE ASSOCIATION PRIOR TO THE ADOPTION OF THE CONSTITUTION, BUT DID NOT ATTEND THE FEBRUARY 11TH MEETING AND THEREFORE DID NOT VOTE ON EITHER THE ADOPTION OF THE CONSTITUTION OR ON THE SUBSEQUENT MOTIONS THAT WERE PASSED. IN OTHER WORDS, WE ONLY ACCEPT AS MEMBERS OF THE ASSOCIATION, AT THE TIME OF ITS FURMATION. THE SIX EMPLOYEES WHO ATTENDED THE MEETING ON FEBRUARY 11TH.

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE ASSOCIATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. IN ORDER TO ESTABLISH THE VALIDITY OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION. HOWEVER. IT WAS INCUMBENT UPON THE ASSOCIATION TO SATISFY THE BOARD THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO BY THE PARTIES ON FEBRUARY 19TH, 1965, THE ASSOCIATION REPRESENTED A MAJORITY OF THE EMPLOYEES OF THE RESPONDENT WHO WERE ELIGIBLE FOR MEMBERSHIP IN THE ASSOCIATION AND WHO ARE COVERED BY THE AGREEMENT. WHILE THERE IS EVIDENCE THAT SIX EMPLOYEES OF THE RESPONDENT BECAME MEMBERS OF THE ASSOCIATION AT THE TIME THAT IT CAME INTO EXISTENCE ON FEBRUARY 11TH, 1965, THERE IS NO EVIDENCE UPON WHICH THE BOARD IS ABLE TO MAKE A FINDING THAT THE ASSOCIATION REPRESENTED A MAJORITY OF THE EMPLOYEES CONCERNED ON FEBRUARY 19TH. THE BOARD THEREFORE IS NOT PREPARED TO FIND THAT THE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT. ACCORDINGLY. THE BOARD FINDS THAT THE AGREEMENT IS NOT A BAR TO THE INSTANT APPLICATION. "

BOARD MEMBER G. RUSSELL HARVEY SAID:-

"While I AM IN AGREEMENT WITH THE DECISION OF THE MAJORITY CERTIFYING THE APPLICANT TRADE UNION. | DISSENT WITH RESPECT TO THE MAJORITY S FINDING RECOGNIZING THE INTERVENER ASSOCIATION AS HAVING THE STATUS OF A TRADE UNION FOR THE FOLLOW-ING REASONS: | DO NOT ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP IN THE ASSOCIATION SINCE IT WAS ALL SECURED PRIOR TO THE ADOPTION OF THE CONSTITUTION OF THE ASSOCIATION. IN OTHER WORDS, THE EMPLOYEES AT THE TIME THEY SIGNED MEMBERSHIP CARDS IN THE ASSOCIATION JOINED A NON-EXISTENT ORGANIZATION. IN MY OPINION, THE FACT THAT THE EMPLOYEES IN QUESTION, SUBSEQUENT TO THE ADOPTION OF THE CONSTITUTION. ESTABLISHED A BARGAINING COMMITTEE AND AUTHORIZED IT TO NEGOTIATE WITH THE RESPONDENT COMPANY IS NOT A CONFIRMATORY ACT WHICH CURES THE BASIC DEFECT IN THE MEMBERSHIP EVIDENCE. FURTHER, IN MY VIEW, THE POSTING OF THE NOTICE OF THE ORGANIZATIONAL MEETING OF THE ASSOCIATION ON THE PREMISES OF THE RESPONDENT WITH THE PERMISSION OF THE PRESIDENT CLEARLY INDICATES MANAGEMENT SUPPORT FOR THE ASSOCIATION IN CONTRAVENTION OF SECTION 10. ACCORDINGLY, I WOULD NOT HAVE GIVEN THE ASSOCIATION THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT."

10716-65-R: WELLAND TYPOGRAPHICAL UNION No. 927 (APPLICANT) v. DAVID E. SCOTT PUBLISHING LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE SAVE AND EXCEPT OFFICE AND EDITORIAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES).

10717-65-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, OTTAWA LOCAL UNION 200 (APPLICANT) v. WARREN BROS. (RESPONDENT).

UNIT: "ALL JOURNEYMEN PAINTERS AND APPRENTICES OF THE RESPONDENT WORKING AT CORNWALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10751-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. UNION CARBIDE CANADA LIMITED, GAS PRODUCTS GROUP (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED JUNE 23RD, 1965." (11 EMPLOYEES IN THE UNIT).

10752-65-R: Local 280 of the Hotel & Restaurant Employees' and Bartenbers' International Union. A.F.L.-C.I.O.-C.L.C. (Applicant) v. The Cross Roads Public House (Respondent).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (10 EMPLOYEES IN THE UNIT).

10753-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE VILLAGE OF POINT EDWARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT OF PUBLIC WORKS, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

 $\frac{10762-65-R}{(Applicant)}$  Sudbury General Workers Union, Local # 101, Canadian Labour Congress (Applicant) v. National Grocers Company Limited (Respondent).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER, BUYER, PRIVATE SECRETARY TO THE BRANCH MANAGER AND STUDENTS EMPLOYED DURING THE SUMMER VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10766-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 837 (APPLICANT) v. TORONTO BUILDING CLEANING & TUCKPOINTING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

ALTHOUGH THE APPLICANT HAS REQUESTED THE COUNTY OF WENTWORTH, IN ITS
RECENT DECISIONS, THE BOARD HAS BEEN GRANTING IN ADDITION THERETO THE TOWNSHIPS
OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON.

10772-65-R: United Brotherhood of Carpenters and Joiners of America, Local 2307 (Applicant) v. Matthews Construction Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT AREA FORMERLY EMBRACED BY THE COUNTIES OF STORMONT AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

10773-65-R: United Steelworkers of America (Applicant) v. Colbey Custom Fabricating Co. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

10777-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Combustion Engineering Superheater Limited (Respondent).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10779-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Advance Metal Industries Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

10780-65-R: BOOT & SHOE WORKERS UNION (APPLICANT) v. HARVARD SHOES, A DIVISION OF GALE SHOES LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(59 EMPLOYEES IN THE UNIT).

10781-65-R: Local 636 of the International Brotherhood of Electrical Workers, A.F.L.-C. .0.-C.L.C. (Applicant) v. Executone Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(9 EMPLOYEES IN THE UNIT).

 $\frac{10783-65-R}{\text{(Applicant)}}$  to Bryant Press Limited (Respondent).

UNIT: "ALL CAMERAMEN, STRIPPERS, PLATEMAKERS, PRESSMEN, FEEDERS AND THEIR APPRENTICES AND PRESS HELPERS IN THE LITHOGRAPHIC DEPARTMENT OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

10787-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #1450 (APPLICANT) v. BEGG & DAIGLE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10788-65-R: International Hod Carriers' Building and Common Labourers' Union of America (Applicant) v. H. J. McFarland Construction Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (16 EMPLOYEES IN THE UNIT).

10791-65-R: International Hod Carriers' Building and Common Labourers' Union of America Local Union No. 597 (Applicant) v. Begg & Daigle Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10792-65-R: Building Service Employees! International Union, Local 183 AFL-CIO-CLC (Applicant) v. Hunt Bros. Peterborough Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

10793-65-R: International Union of Operating Engineers Local 796 (Applicant) v. Firestone Tire & Rubber Company of Canada Limited, Industrial Products Division (Respondent).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN LINDSAY."
(3 EMPLOYEES IN THE UNIT).

 $\frac{10795-65-R}{\text{(Applicant)}}$  v. J. N. D. King and M. Cridland, carrying on business as the Queen's Hotel (Respondent).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMENT IN THE EMPLOY OF THE RESPONDENT IN THE BEVERAGE ROOMS AND COCKTAIL LOUNGE OF ITS QUEEN'S HOTEL AT PETERBOROUGH, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(11 EMPLOYEES IN THE UNIT).

10796-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' UNION, LOCAL 604 (APPLICANT) v. LOUCKS (PETERBOROUGH) LIMITED (RESPONDENT).

Unit: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT IN THE BEVERAGE ROOMS OF ITS MONTREAL HOUSE AT PETERBOROUGH, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

10798-65-R: Hotel and Restaurant Employees and Bartenders' Union, Local 604, Peterborough, Ontario (Applicant) v. New Windsor Hotel (Respondent).

Unit: "ALL WAITERS, BARTENDERS AND TAPMEN EMPLOYED IN THE BEVERAGE ROOMS OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

10799-65-R: Hotel and Restaurant Employees and Bartenders Union, Local 604 (Applicant) v. Frank K. Sheedy and Eugene J. Sheedy carrying on Business as the American Hotel (Respondent).

Unit: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT IN THE BEVERAGE ROOMS OF ITS AMERICAN HOTEL AT PETERBOROUGH, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

10804-65-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Village of Point Edward Arena Commission (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS POINT EDWARD ARENA AT POINT EDWARD, SAVE AND EXCEPT MANAGER, REFRESHMENT BOOTH MANAGERESS, PERSONS ABOVE THE RANK OF MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10806-65-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS! INTERNATIONAL UNION. AFL-CIO-CLC (APPLICANT) v. ROYAL OAK HOTEL OAKVILLE, ONT. (RESPONDENT).

Unit: "ALL TAPMEN, BARTENDERS, BEVERAGE ROOM WAITERS, LOUNGE WAITERS BARBOYS AND IMPROVERS REGULARLY EMPLOYED BY THE RESPONDENT AT OAKVILLE, FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

10807-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. Walker Metal Products Limited (Respondent).

UNIT: "ALL LABORATORY TECHNICIANS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT IN WINDSOR." (10 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES ALL OF WHOM ARE CLASSIFIED AS LABORATORY TECHNICIANS. IN A PREVIOUS APPLICATION (BOARD FILE NO. 9571-64-R) THE APPLICANT SOUGHT THE INCLUSION OF THE SAME LABORATORY TECHNICIANS IN A UNIT OF OFFICE EMPLOYEES. IN THAT APPLICATION A CERTIFICATE WAS ISSUED TO THE APPLICANT DATED JANUARY 20TH, 1965 COVERING A UNIT OF OFFICE EMPLOYEES, BUT ON THE BASIS OF THE REPORT OF AN EXAMINER DATED DECEMBER 21ST, 1964, THE BOARD FOUND THAT THE LABORATORY TECHNICIANS WERE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT. COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT THE GROUNDS FOR THE RESPONDENT'S CHALLENGE TO THE INCLUSION OF THE LABORATORY TECHNICIANS IN THE BARGAINING UNIT IN THE EARLIER APPLICATION WAS THAT THEY EXERCISED MANAGERIAL FUNCTIONS. SINCE THE BOARD MADE NO DETERMINATION ON THAT ISSUE IN ITS ENDORSEMENT OF JANUARY 20TH, 1965, THE RESPONDENT AGAIN CHALLENGED THE INCLUSION OF THE LABORATORY TECHNICIANS IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT IN THE INSTANT CASE ON THE SAME GROUNDS. THE PARTIES AGREED THAT THE BOARD SHOULD MAKE ITS DETERMINATION ON THIS ISSUE ON THE BASIS OF THE EXAMINER'S REPORT DATED DECEMBER 21ST, 1964. HAVING CONSIDERED THE EXAMINATION OF JAMES D. STOREY IN THAT REPORT, WHOSE EXAMINATION WAS REPRESENTATIVE OF ALL THE LABORATORY TECHNICIANS, THE BOARD FINDS THAT THE LABORATORY TECHNICIANS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

Subsequent to the issuing of the Board's certificate of January 20th, 1965, the parties entered into a collective agreement covering the employees in the bargaining unit described in the certificate. The applicant and the respondent are also parties to a collective agreement covering the plant employees of the respondent. The laboratory technicians are not covered by this agreement. Having regard both to the descriptions of the bargaining units contained in the two agreements and the representations of the parties, the Board finds that all laboratory technicians in the employ of the respondent at its plant in Windsor constitute a unit of employees of the respondent appropriate for collective bargaining."

10811-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, LOCAL 604 (APPLICANT) v. THE KING GEORGE HOTEL (PETERBOROUGH) LTD. (RESPONDENT).

Unit: "ALL waiters, bartenders and tapmen in the employ of the respondent in the beverage rooms and cocktail lounge of its King George Hotel at Peterborough, save and except assistant manager, persons above the rank of assistant manager and persons regularly employed for not more than 24 hours per week." (9 employees in the unit).

10814-65-R: General Truck Drivers' Union, Local 879, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. National Grocers Company Limited (Respondent).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, BUYERS, PRIVATE SECRETARY TO THE OFFICE MANAGER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10819-65-R: Textile Workers Union of America AFL-CIO (Applicant) v. Springdale Mills (Ontario) Limited (Respondent).

<u>Unit</u>: "ALL employees of the respondent at Cornwall, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than  $2^4$  hours per week." (8 employees in the unit).

10820-65-R: The United Brotherhood of Carpenters of America (Applicant) v. R. E. Lee Construction Co. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

10821-65-R: International Chemical Workers Union (Applicant) v. Fyr-Fyter Company of Canada Limited (Respondent).

<u>Unit</u>: "ALL employees of the respondent at the Township of Chinguacousy, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed for the school vacation period." (10 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10824-65-R: International Hod Carriers Building and Common Labourers Union, Local 597 (Applicant) v. Mel-Ron Construction (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10827-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' UNION, LOCAL 604, PETERBOROUGH, ONTARIO (APPLICANT) v. New GRAND HOTEL (PETERBOROUGH) LIMITED (RESPONDENT).

Unit: "ALL waiters, bartenders and tapmen in the employ of the respondent in the beverage rooms and cocktail lounge of its New Grand Hotel at Peterborough, save and except assistant manager, persons above the rank of assistant manager and persons regularly employed for not more than 24 hours per week." (14 employees in the unit).

10833-65-R: KINGSTON TYPOGRAPHICAL UNION No. 204 (APPLICANT) v. CANADIAN REGISTER LIMITED (RESPONDENT).

UNIT: "ALL MAILERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10835-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. F. GREER ROBERTS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(12 EMPLOYEES IN THE UNIT).

10857-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Emery Engineering & Contracting Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWN OF PARRY SOUND AND IN McDougall Township, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

AFTER DUE CONSIDERATION THE BOARD IS NOT PERSUADED THAT THE DISTRICT OF PARRY SOUND CONSTITUTES AN APPROPRIATE GEOGRAPHIC AREA. IN THESE CIRCUMSTANCES, AND AS A PURELY INTERIM MEASURE ONLY, THE BOARD FOUND THE ABOVE AREA TO BE APPROPRIATE.

10865-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Harry Carr-Braint and Sons (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10866-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Belleville Builders Agencies Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, GRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

10867-65-R: International Hod Carriers Building and Common Labourers Union, Local 597 (Applicant) v. The Mitchell Construction Company (Canada) (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (45 EMPLOYEES IN THE UNIT).

THE BOARD HAS HELD IN PREVIOUS CASES THAT IT IS NOT WITHIN ITS JURISDICTION TO ISSUE A PROJECT CERTIFICATE (SEE SECTION 92(1) OF THE LABOUR RELATIONS ACT AND THE MANNIX CO. LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH 1965, p. 611). THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE WORKING IN REGULAR BOARD AREA NUMBER TWELVE.

## CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10756-65-R: OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL 263 (APPLICANT) v. Lord & Burham Co. Limited (Respondent) v. The Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers, A.F.L.-C.I.O.-C.L.C. (Intervener).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PAYROLL CLERK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE BASIS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND DRAFTSMEN." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS LIST			8
NUMBER OF BALLOTS CAST		8	
NUMBER OF BALLOTS SEGREGATED AND			
NOT COUNTED	1		
Number of ballots marked in favour			
OF APPLICANT	6		
Number of ballots marked against			
APPLICANT	1		

10761-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Lustro Steel Products Company (Respondent) v. District 50, United Mine Workers of America (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND SECURITY GUARDS." (23 EMPLOYEES IN THE UNIT).

NUMBER OF	NAMES ON REVISED VOTERS! LIST	21
NUMBER OF	BALLOTS CAST	21
NUMBER OF	BALLOTS MARKED IN FAVOUR	
OF APPLIC		15
	BALLOTS MARKED IN FAVOUR	
OF INTER	VENER	6

### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10555-65-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF BRAMPTON (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (25 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNICAL SUPERVISOR, AND SECRETARY TO THE TOWN ENGINEER, ARE INCLUDED IN THE BARGAINING UNIT, AND THAT SECRETARY TO THE CLERK-TREASURER, AND SECRETARY TO THE TOWN SOLICITOR, ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES ON REVISED VOTERS! LIST			23
NUMBER OF BALLOTS CAST		23	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	17		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT	6		

10684-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 3189 (Applicant) v. The Sanderson-Harold Company (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PARIS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

Number of names on revised voters' List	45
Number of ballots cast	45
Number of ballots marked in favour	
OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	17

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

## No Vote Conducted

10586-65-R: United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-C10-CLC (Applicant) v. Dominion Rubber Company Limited (Respondent). (25 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Following the Issue of the Examiner's report in this matter dated September 2nd, 1965 the applicant requested leave of the Board to withdraw its application.

HAVING REGARD TO STAGE OF THE PROCEEDINGS AT WHICH THE REQUEST WAS MADE THE BOARD FOLLOWING ITS USUAL PRACTICE IN SUCH CASES DISMISSES THE APPLICATION."

10611-65-R: International Molders & Allied Workers Union AFL.CIO.CLC. Local Union 269 (Applicant) v. The John Bertram & Sons Co. Limited, C.C.M. Contract Sales Department (Respondent) v. Valley City Lodge, No. 1740, The International Association of Machinists (Intervener). (46 employees).

(SEE INDEX ENDORSEMENT PAGE 428 ).

10683-65-R: Nurses' Association Halton County Health Unit (Applicant) v. The Corporation of The County of Halton and The Halton County Health Unit (Respondents). (26 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The Board finds that the respondents are municipalities as defined in The Department of Municipal Affairs Act and that they have declared under section 89 of The Labour Relations Act and The Labour Relations Act shall not apply to them in their relations with their employees or any of them. In view of the action of the respondents in making such declarations, the Board has no jurisdiction to process this application further and the proceeding is accordingly terminated."

10763-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) v. ESSEX WIRE CORPORATION LIMITED (RESPONDENT) v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141, AFFILIATED WITH THE 1.B. OF T.C.W. & H. OF A. (INTERVENER). (478 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant applied, on August 19th, 1965, to be certified as bargaining agent for all employees of the respondent at St. Thomas, with certain exceptions not here relevant and requested that a pre-hearing representation vote be taken.

THE APPLICANT FILED 279 COMBINATION APPLICATION CARDS AND RECEIPTS ON AUGUST 23RD. 1965.

Subsequently, on August 27th, 1965, the applicant Filed an additional 42 combination application cards and receipts, together with Form 9, a declaration concerning membership documents in support of the 42 "additional" applications for membership and receipts.

THE TERMINAL DATE FOR THIS APPLICATION WAS FIXED AS AUGUST 27th, 1965.

Section 6 of the Board's Rules of Procedure requires THAT "THE APPLICANT SHALL, NOT LATER THAN THE SECOND DAY AFTER THE TERMINAL DATE FOR THE APPLICATION, FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 9."

THE APPLICANT FAILED TO FILE FORM 9 WITHIN THE TIME FIXED BY SECTION 6 OF THE BOARD'S RULES OF PROCEDURE WITH RESPECT TO THE 279 MEMBERSHIP DOCUMENTS WHICH WERE FILED ON AUGUST 23RD, 1965.

Subsequently, a pre-hearing vote Meeting was convened by the Board's Examiner on August 31st, 1965, pursuant to the Board's direction dated August 23rd, 1965. All the parties were represented at the pre-hearing vote Meeting and the parties were advised by the Examiner that Form 9 was filed for 42 cards and receipts which had been received by the Board having been mailed registered mail on August 27th, 1965, and that no Form 9 was filed for 279 cards and receipts which had been delivered by hand to the Board on August 23rd, 1965. This information is contained in item 10 of the Examiner's pre-hearing vote Meeting Report.

AFTER THE EXAMINER HAD PREPARED HIS PRE-HEARING VOTE MEETING REPORT IN WRITING, AND HAD READ IT OVER TO THE PARTIES, HE AGAIN ADVISED THE MEETING OF THE CONTENTS OF ITEM 10 OF HIS REPORT.

None of the parties objected to any of the contents of the Examiner's pre-hearing vote meeting report.

THE APPLICANT DID NOT ATTEMPT TO FILE FORM 9 IN SUPPORT OF THE 279 MEMBERSHIP DOCUMENTS AT THE PRE-HEARING VOTE MEETING AND FOR THAT MATTER THE APPLICANT HAS NOT SOUGHT LEAVE TO FILE FORM 9 IN SUPPORT OF THE 279 MEMBERSHIP DOCUMENTS UP TO THE DATE OF THIS DECISION.

HAVING REGARD TO THE DECISION OF THE BOARD IN THE CANADIAN INDUSTRIES LIMITED CASE, DATED DECEMBER 22ND, 1960, BOARD FILE 243-60-R, WE FIND THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY VOTING CONSTITUENCY THE BOARD MIGHT DEEM TO BE APPROPRIATE, WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, WE ARE OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

" DISSENT.

IN THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE LISTED THIS MATTER FOR HEARING IN ORDER TO GIVE THE APPLICANT AN OPPORTUNITY TO SHOW CAUSE WHY THE APPLICATION SHOULD NOT BE DISMISSED."

10768-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union 837 (Applicant) v. Chilman Construction Company Limited (Respondent) v. Christian Trade Unions of Canada (Intervener). (8 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD...FINDS ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

10769-65-R: POCKETBOOK WORKERS UNION, LOCAL (9) OF THE INTERNATIONAL LEATHERGOODS, PLASTICS, AND NOVELTY WORKERS UNION (APPLICANT) v. COLUMBIA FINISHING MILLS, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTED OF APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT TRADE UNION, TOGETHER WITH RECEIPTS FOR THE PAYMENT OF \$1.00. THE APPLICATIONS, WITH ONE EXCEPTION, DID NOT BEAR ORIGINAL SIGNATURES OF EMPLOYEES. THEY DID NOT, THEREFORE, SATISFY THE REQUIREMENTS OF SECTION 50 OF THE BOARD'S RULES OF PROCEDURE.

HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT FORTY-FIVE PER CENT OR MORE OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

10774-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. St. Mary's General Hospital (Respondent). (10 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL MAINTENANCE STAFF UNDER THE DIRECT SUPERVISION OF OF THE CHIEF ENGINEER EMPLOYED BY THE RESPONDENT AT KITCHENER.

The applicant agreed that the maintenance staff, as such, is not a craft unit within the meaning of section  $6\ (2)$  of The Labour Relations act but took the position that the maintenance

STAFF AT THE RESPONDENT'S HOSPITAL WERE COMMONLY ASSOCIATED WITH THE STATIONARY ENGINEERS, IN THE BOILER ROOM, WHOM THE APPLICANT REPRESENTED UNDER A SUBSISTING COLLECTIVE AGREEMENT.

IT WOULD APPEAR THAT THE ONLY ASSOCIATION BETWEEN THE STATIONARY ENGINEERS AND THE MAINTENANCE STAFF WAS THROUGH THE COMMON SUPERVISION OF THE CHIEF ENGINEER WHO WAS EXCLUDED FROM THE BARGAINING UNIT REPRESENTED BY THE APPLICANT.

IT WOULD FURTHER APPEAR THAT THERE WAS NO ASSOCIATION BETWEEN THE STATIONARY ENGINEERS IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT AND THE MAINTENANCE STAFF WITH WHOM WE ARE HERE CONCERNED.

FOR THE REASONS GIVEN BY THE BOARD IN THE ST. MARY'S GENERAL HOSPITAL (KITCHENER) CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1963, p. 496, THE BOARD FINDS THAT THE UNIT APPLIED FOR BY THE APPLICANT, IN THE CIRCUMSTANCES OF THIS CASE, IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

SINCE NO BARGAINING RIGHTS ARE IN EXISTENCE WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT, OTHER THAN STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM, WE ARE OF OPINION THAT THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING, WHICH WOULD INCLUDE THE MAINTENANCE STAFF WITH WHOM WE ARE HERE CONCERNED, WOULD BE THE USUAL "HOSPITAL UNIT", THAT IS TO SAY AN ALL EMPLOYEE UNIT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

10786-65-R: United Brotherhood of Carpenters and Joiners of America, Local 1669
(Applicant) v. Dominion Bridge Company, Limited - Ontario Branch (Respondent).
(4 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS INFORMED THE BOARD THAT AN AGREEMENT DATED SEPTEMBER 10TH, 1965 HAS BEEN SIGNED WITH THE RESPONDENT.

IN THESE CIRCUMSTANCES THERE IS NO NEED TO PROCESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

10797-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS! UNION, LOCAL 604
PETERBOROUGH, ONTARIO (APPLICANT) v. McGILLIS HOTEL COMPANY LIMITED (RESPONDENT).

Unit: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT IN ITS BEVERAGE ROOMS IN PETERBOROUGH, SAVE AND EXCEPT OWNERS, MANAGER, ASSISTANT MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(10 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

## DISMISSED SUBSEQUENT TO POST-HEARING VOTE

9880-64-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Chrysler Canada Ltd. (Respondent).

IN THIS CASE THE BOARD FOUND TWO BARGAINING UNITS TO BE APPROPRIATE.

UNIT #1 WAS DISMISSED AFTER A REPRESENTATION VOTE AS FOLLOWS:-

UNIT #1: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS OFFICES AT 650 DIXON ROAD IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR." (41 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

Number of Names on Revised Voters' List 41

Number of Ballots Cast 41

Number of Ballots Marked in Favour 17

Number of Ballots Marked Against 24

Unit #2 which was certified without a representation vote is entered on page 381 of this Report.

10055-64-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. RENFREW AIRCRAFT AND ENGINEERING COMPANY LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT ASSISTANT SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR, PRIVATE SECRETARIES TO THE DEPARTMENT HEADS, PERSONS EMPLOYED IN THE PERSONNEL OFFICE, CHIEF ESTIMATOR, SALESMEN AND TECHNICAL REPRESENTATIVES."

NUMBER OF NAMES ON REVISED VOTERS! LIST			19
NUMBER OF BALLOTS CAST		19	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	9		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT	10		

10285-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. COOEY METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRIGHTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, AND OFFICE AND SALES STAFF." (75 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST	6	5
NUMBER OF BALLOTS CAST	62	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	31	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	31	

(SEE INDEXED ENDORSEMENT PAGE 420 ).

10547-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 956 (APPLICANT) V. TIMMINS HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT BUSINESS ADMINISTRATOR AND PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR." (8 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE LIBRARIAN'S ASSISTANT IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF	NAMES ON REVISED VOTERS! LIST		8	
Number of	BALLOTS CAST		8	
NUMBER OF	BALLOTS MARKED IN FAVOUR			
OF APPLI	CANT	0		
NUMBER OF	BALLOTS MARKED AGAINST			
APPLICAN"	T	8		

## APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

10698-65-R: Wood, Wire & Metal Lathers International Union, Local 97 (Applicant) v. Ballantyne Lathing Ltd. (Respondent). (18 employees).

10705-65-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. F. & J. LUMBER COMPANY LIMITED (RESPONDENT). (53 EMPLOYEES).

10767-65-R: Local Union Number 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Lakeshore Food Products Ltd. (Respondent). (3 employees).

10822-65-R: United Steelworkers of America (Applicant) v. Strathagami Mines, Inc. (Respondent). (19 employees).

10849-65-R: United Steelworkers of America (Applicant) v. Allen-Bradley Canada Limited (Respondent) v. United Electrical Radio & Machine Workers of America (UE) (Intervener). (188 employees).

10856-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION 597 (APPLICANT) v. ELLIS-DON LIMITED (RESPONDENT). (4 EMPLOYEES).

10858-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union No. 597 (Applicant) v. George Smider (Respondent). (3 employees).

10875-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #397, WHITBY & OSHAWA, ONTARIO (APPLICANT) v. ELLIS-DON LIMITED (RESPONDENT). (3

### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

## OF DURING SEPTEMBER

10307-65-R: Leo Dorion (Applicant) v. International Hod Carriers, Building and Common Labourers' Union of America, Local 527, (A.F.L.-C.1.0.) (C.L.C.) (RESPONDENT). (GRANTED) (14 employees).

(Re: Thomas Fuller Construction Company (1958) Limited, Ottawa, Ontario).

NUMBER OF NAMES ON REVISED VOTERS' LIST 32

NUMBER OF BALLOTS CAST 32

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT 0

NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT 32

10490-65-R: EMPLOYEES OF THE MEAT DEPARTMENT OF LONDON FOOD CITY (REPRESENTED BY W.A. CRAWFORD) v. LOCAL UNION 633 AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO (RESPONDENT) v. LONDON FOOD CITY (OSHAWA WHOLESALE LIMITED) (INTERVENER). (GRANTED). (6 EMPLOYEES).

(RE: LONDON FOOD CITY (OSHAWA WHOLESALE LIMITED),
TORONTO, ONTARIO).

Number of names on revised voters' LIST

Number of ballots cast

5

Number of ballots marked in favour

of respondent

Number of ballots marked against

respondent

4

FOLLOWING DIRECTION OF THE REPRESENTATION VOTE BY THE BOARD ON JUNE 29, 1965, TO WHICH BOARD MEMBER E. BOYER DISSENTED, THE RESPONDENT REQUESTED RECONSIDERATION OF THIS DECISION ON THE GROUND THAT THE BOARD MAY HAVE BEEN MISLED AS TO THE MANNER IN WHICH THE SIGNATURES ON THE PETITION SEEKING TERMINATION OF THE RESPONDENT'S BARGAINING RIGHTS WERE OBTAINED.

To the REQUEST THE BOARD SAID:-

"WE HAVE CONSIDERED THE RESPONDENT'S REQUEST FOR RECONSIDERATION AS CONTAINED IN ITS LETTER OF JULY 6TH. 1965. ALL THE EVIDENCE WHICH WAS ADDUCED IN SUPPORT OF THE PETITION AND UPON WHICH THE RESPONDENT NOW SEEKS TO RELY AS DISCLOSING REASONS FOR DISALLOWING THE PETITION WAS CAREFULLY WEIGHED AND CONSIDERED BY THE BOARD AT THE TIME OF OUR DECISION OF JUNE 29TH, 1965. AT THAT TIME WE REACHED THE CONCLUSION THAT THE RESPONDENT SINTERPRETATION OF THE EVIDENCE AS ARGUED AT THE HEARING. AND NOW REITERATED AS A BASIS FOR RECONSIDERATION. COULD NOT BE SUSTAINED, IN VIEW OF WHAT WE FOUND TO BE THE SUPERIOR WEIGHT OF EVIDENCE IMPELLING A CONTRARY INTERPRETATION. WHILE THERE WERE SOME MINOR INCONSISTENCIES IN THE NARRATION OF EVENTS BETWEEN WITNESSES. THESE WERE NOT, IN OUR OPINION, OF SUCH A NATURE, PROPORTION OR SIGNIFICANCE TO WARRANT THE CONSTRUCTION PLACED UPON THEM BY THE RESPONDENT, NOR TO AFFECT ADVERSELY THE CREDIBILITY OF THOSE WITNESSES. ON THE BASIS OF ALL THE EVIDENCE PLACED BEFORE US, WE FOUND THE CON-CLUSION INEVITABLE THAT THE PETITION REFLECTED THE VOLUNTARY SIGNIFICA-TIONS OF THE SIGNATORIES.

As the respondent's request for reconsideration is devoid of any new grounds which were not or could not have been raised and dealt with at the hearing, we do not consider it advisable to reconsider our decision of June 29th, 1965.

THE RESPONDENT'S REQUEST FOR RECONSIDERATION MUST BE DENIED."

BOARD MEMBER E. BOYER ADDED:-

"While I Adhere to my original position as expressed in my dissent, I find that no new matters are raised in the request for reconsideration. I am accordingly compelled to concur in the majority decision that the application for reconsideration be denied."

10727-65-R: ALBERT A. HEBERT (APPLICANT) V. THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT) V. IRVING CHARLES SUPERMARKETS LIMITED (INTERVENER). (DISMISSED). (62 EMPLOYEES).

(Re: IRVING-CHARLES SUPERMARKETS LIMITED, OTTAWA, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"According to the evidence before us the only notice pursuant to section 47a given to the intervener, Irving-Charles Supermarkets Limited, was the notice which this intervener acknowledges that it received in the instrument

of Minutes of Settlement dated September 23rd, 1964. In the absence of any other date referred to in this instrument as the date of receipt thereof, elementary principles of construction constrain us to interpret the document as speaking as of the date thereof and that accordingly we must conclude that notice was received on that date, namely September 23rd, 1964.

The date of the making of this application for termination of bargaining rights under section 43 of the Act was August 9th, 1965. Section 47a(9) provides as

FOR THE PURPOSES OF SECTIONS 5, 43, 46 AND 96, A NOTICE GIVEN BY A TRADE UNION UNDER SUBSECTION 2 OR A DECLARATION MADE BY THE BOARD UNDER SUBSECTION 5 HAS THE SAME EFFECT AS A CERTIFICATION UNDER SECTION 7.

It is quite plain, therefore, that a notice given pursuant to section 47a has, for purposes of section 43, the same effect as a certification under section 7 of the Act. In consequence, the effect of section 47a(9) is to bring into operation the provisions of section 43(1) which regulate the time when an application for termination of a union's bargaining rights may be made to this Board. Section 46(1)(a) and (b) also, of course, attach further requirements to the conditions mentioned in section 43(1).

IN THE RESULT, THIS APPLICATION, WHICH WAS BROUGHT LESS THAN ONE YEAR FOLLOWING THE GIVING OF THE NOTICE PURSUANT TO SECTION 47A. IS UNTIMELY.

THE APPLICATION IS DISMISSED."

10765-65-R: GARNET ALBERT BELFRY, EVERETT FERREN AND STEWART YONG (APPLICANTS) V. FUEL & ICE DRIVERS & HELPERS UNION, LOCAL 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN (RESPONDENT) V. McCarthy and Johnston Fuels Limited (Intervener). (DISMISSED). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application under section 43 of The Labour Relations Act for a declaration that the respondent trade union no longer represents the employees in the bargaining unit for which it is the bargaining agent.

HAVING REGARD TO THE EVIDENCE OF THE ASSISTANCE GIVEN TO THE APPLICANTS BY THE INTERVENER COMPANY IN THE MAKING OF THE INSTANT APPLICATION, THE BOARD IS NOT PREPARED TO GIVE WEIGHT TO THE DOCUMENTS FILED IN SUPPORT OF THE APPLICATION. THE APPLICATION ACCORDINGLY IS DISMISSED.

WE WOULD MENTION THAT THERE WAS FILED WITH THE BOARD A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED OCTOBER 1ST, 1959. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS EFFECTIVE FROM OCTOBER 1ST, 1959 TO OCTOBER 1ST, 1961 AND CONTINUES IN EFFECT FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. COUNSEL FOR THE INTERVENER INFORMED THE BOARD THAT THE RESPONDENT HAD NOT SOUGHT TO BARGAIN WITH THE COMPANY FOR A RENEWAL OF THE ABOVE COLLECTIVE AGREEMENT AND THAT. IN FACT. THE RESPONDENT HAD NOT COMMUNICATED WITH THE COMPANY SINCE 1961. THE APPLICANT, GARNET BELFRY, WHO GAVE EVIDENCE IN SUPPORT OF THE APPLICATION, STATED THAT THE EMPLOYEES OF THE INTERVENER HAVE NOT BEEN APPROACHED BY A REPRESENTATIVE OF THE UNION FOR OVER TWO YEARS. IT WAS NOT ARGUED, HOWEVER, BY EITHER COUNSEL FOR THE APPLICANTS OR COUNSEL FOR THE INTERVENER THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS. NEVERTHELESS. WE FEEL IMPELLED TO COMMENT ON THE FAILURE OF THE RESPONDENT TO SERVICE THE EMPLOYEES. FOR WHOM IT IS THE BARGAINING AGENT. FOR A PERIOD OF SOME YEARS. DESPITE THE NEGLECT OF ITS RESPONSIBILI-TIES THE EVIDENCE IS THAT THE RESPONDENT HAS CONTINUED TO COLLECT UNION DUES FROM THE EMPLOYEES. WE WISH TO MAKE IT CLEAR THAT WE DO NOT CONDONE THE BEHAVIOUR OF THE RESPONDENT AND WOULD POINT OUT THAT ITS CONDUCT ONLY SERVES TO DISCREDIT THE UNION."

10809-65-R: L. A. LEBLANC (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (RESPONDENT) V. CARGO DOCKERS LIMITED (INTERVENER). (GRANTED). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant having made an application to terminate the bargaining rights of the respondent, and the respondent having advised the Board by letter from its Assistant Business Manager, Mr. H. A. Herron, dated September 15, 1965, that "--- we no longer claim to represent employees affected by the above noted application.", the Board finds that the respondent has abandoned its bargaining rights and no longer represents the employees of Cargo Dockers Limited in the unit hereinafter set forth for whom it has heretofore been the bargaining agent:

ALL EMPLOYEES OF CARGO DOCKERS LIMITED AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."

# APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING SEPTEMBER

 $\underline{10310-65-U}\colon$  Beatty Bros. (Applicant) v. United Steelworkers of America, Local 3789 (Respondent). (WITHDRAWN).

10746-65-U: Massey Ferguson Industries Limited (Applicant) v. J. Acorn et al (Respondents). (WITHDRAWN).

10802-65-U: EMCO LIMITED (APPLICANT) v. GARY JOHN KENNEY ET AL (RESPONDENTS).

# APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING SEPTEMBER

10810-65-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. CURVEPLY WOOD PRODUCTS LTD. (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCKOUT CALLED OR AUTHORIZED BY THE RESPONDENT WAS UNLAWFUL. IT IS AGREED THAT THE EMPLOYEES WHO WERE ALLEGEDLY LOCKED OUT HAVE BEEN RECALLED TO WORK BY THE EMPLOYER AND HAVE IN FACT RETURNED TO WORK. THE BOARD'S POLICY WITH RESPECT TO THE MAKING OF DECLARATIONS IN SUCH CIRCUMSTANCES HAS BEEN SET FORTH IN THE BALL BROTHERS LIMITED CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTS \$16,091, AND IN A NUMBER OF SUBSEQUENT CASES. THAT CASE DEALT WITH AN APPLICATION FOR A DECLARATION THAT A STRIKE WAS UNLAWFUL AND THE BOARD THERE STATED ITS POLICY THAT A DECLARATION SHOULD NOT BE ISSUED IN CASES IN WHICH THE STRIKE HAD BEEN SETTLED BEFORE THE APPLICATION CAME ON FOR HEARING. As was pointed out in the Ball Brothers Case, this policy APPLIES IN CASES OF ALLEGED UNLAWFUL LOCKOUTS AS WELL AS IN CASES OF ALLEGED UNLAWFUL STRIKES. IT WAS ARGUED BY COUNSEL FOR THE APPLICANT THAT THE FACTS OF THE INSTANT CASE BROUGHT IT WITHIN ONE OF THE EXCEPTIONS TO THE POLICY STATED IN THE BALL BROTHERS CASE, NAMELY THAT THERE WAS A REASONABLE FEAR THAT THE ALLEGEDLY UNLAWFUL CONDUCT WOULD BE REPEATED. HAVING REGARD TO ALL OF THE EVIDENCE, HOWEVER, THE BOARD IS OF THE OPINION THAT THE CIRCUMSTANCES OF THE PRESENT CASE DID NOT BRING IT WITHIN THIS EXCEPTION TO THE BOARD SPOLICY. THE APPLICATION IS ACCORDINGLY DISMISSED."

# APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

10536-65-U: A.L. WATSON LIMITED AND A.L. WATSON (APPLICANT) v. THE BRICKLAYERS' UNION No. 2 (AFFILIATED WITH THE BRICKLAYERS, MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA), AND DONALD WILLIAMS (BUSINESS REPRESENTATIVE) (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 436 ).

10691-65-U: United Steelworkers of America (Applicant) v. Caland Ore Company Limited (Respondent). (WITHDRAWN).

10715-65-U: Local 280 of the International Beverage Dispensers! & Bartenders! Union of the Hotel and Restaurant Employees! and Bartenders! International Union, A.F. of L., CIO. CLC. (Applicant) v. Alvin Snider, carrying on Business under the Firm name and style of the Beverly Tavern (Respondent). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION BY THE APPLICANT, LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS! & BARTENDERS! Union of the Hotel and Restaurant Employees! AND BARTENDERS! INTERNATIONAL Union, A.F. of L., CIO. CLC., AGAINST THE RESPONDENT, ALVIN SNIDER, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF THE BEVERLEY TAVERN, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:-

THAT CONTRARY TO SECTIONS 12 AND 69 OF THE LABOUR RELATIONS ACT, THE RESPONDENT HAS REFUSED TO MEET WITH THE APPLICANT WITHIN FIFTEEN DAYS FROM THE GIVING OF NOTICE BY THE APPLICANT TO THE RESPONDENT, DATED THE 31ST DAY OF MAY, 1965, PURSUANT TO SECTION 40 OF THE LABOUR RELATIONS ACT AND THE RESPONDENT HAS FROM ON OR ABOUT THE 15TH DAY OF JUNE, 1965, AND FROM DAY TO DAY THEREAFTER TO AND INCLUDING THE 25TH DAY OF AUGUST, 1965, NOT BARGAINED IN GOOD FAITH AND MADE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

THE APPROPRIATE DOCUMENT OF CONSENT WILL ISSUE."

 $\frac{10803-65-U}{\text{(WITHDRAWN)}}$ . Emco Limited (Applicant) v. Gary John Kinney et al (Respondents).

10815-65-U: International Woodworkers of America (Applicant) v. Curveply Wood Products Ltd. (Respondent). (WITHDRAWN).

# COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING SEPTEMBER

10464-65-U: United Steelworkers of America (Complainant) v. I. Waxman and Company (RESPONDENT).

10488-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. I. WAXMAN AND COMPANY (RESPONDENT).

10660-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. THE DOCTOR'S HOSPITAL (TORONTO) (RESPONDENT).

10745-65-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) v. S. S. KRESGE COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for relief under section 65 of The Labour Relations Act.

ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THE BOARD IS NOT SATISFIED THAT MRS. MINA CHRISTY WAS DISCHARGED BY THE RESPONDENT FOR UNION ACTIVITY CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS ACCORDINGLY DISMISSED."

10757-65-U: I.A.T.S.E. LOCAL 435 (COMPLAINANT) V. NESTOR ERECHOOK, OWNER ROXY THEATRE, WAWA, ONTARIO (RESPONDENT).

10759-65-U: Local 280 of The Hotel and Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. Eastwood Park Hotel Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This complaint is dismissed for the reasons given at the hearing."

10771-65-U: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (COMPLAINANT) v. SUNNY ORANGE CANADA LIMITED (RESPONDENT).

10776-65-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. DOCTOR'S HOSPITAL (TORONTO) (RESPONDENT).

10844-65-U: United Brotherhood of Carpenters and Joiners of America Local 18 (Complainant) v. Reel-Pack Limited (Respondent).

## APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING SEPTEMBER

10082-64-M: Niagara Falls Civic Employees Local Union 133 of the National Union of Public Employees (Applicant) v. The Corporation of the City of Niagara Falls (Respondent).

In this application, the Board enquired into the status of three persons and found that two of them exercised managerial functions and therefore were not employees while the other did not exercise this function and therefore was an employee within the meaning of section 1(3) (B) of the Labour Relations Act.

BOARD MEMBER G. RUSSELL HARVEY DISSENTED IN PART.

10213-65-M: Local Union 4509 of United Steelworkers of America (Applicant) v. The Algoma Steel Corporation, Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant is applying for relief under section 79(2) of The Labour Relations Act. More particularly, the applicant filed a list of 364 persons with respect to whom it is requesting that the Board make a determination as to whether they are employees within the meaning of the Act. At the Board hearing of this matter on May 12th the applicant withdrew 99 names from the list.

AT THE OUTSET OF THE HEARING ON MAY 12TH, COUNSEL FOR THE APPLICANT ADMITTED THAT THE APPLICATION WAS PREMATURE SINCE THE APPLICANT AND RESPONDENT HAD NOT DISCUSSED MANY OF THE PERSONS AND CATEGORIES ON THE APPLICANT'S LIST. COUNSEL FOR THE APPLICANT

SOUGHT LEAVE OF THE BOARD TO WITHDRAW THE APPLICATION. IN THE ALTERNATIVE, COUNSEL FOR THE APPLICANT PROPOSED THAT THE BOARD HEAR THE APPLICATION AND THAT THE PARTIES THEN MEET AND DISCUSS THE PERSONS AND CATEGORIES ON THE LIST FILED BY THE APPLICANT. AFTER SUCH A MEETING THE APPLICANT WOULD SUBMIT A REVISED LIST CONTAINING THE NAMES OF THOSE PERSONS AND CATEGORIES UPON WHICH THE PARTIES HAD BEEN UNABLE TO REACH AGREEMENT. COUNSEL FOR THE RESPONDENT AT THE HEARING WAIVED THE OBJECTION OF THE RESPONDENT TO THE PREMATURITY OF THE APPLICATION AND AGREED TO ALTERNATIVE PROPOSAL PUT FORWARD BY COUNSEL FOR THE APPLICANT PROVIDED THAT THE BOARD FOUND THAT THE APPLICANT WAS ENTITLED TO THE RELIEF THAT IT IS SEEKING.

HAVING CONSIDERED THE EVIDENCE BEFORE IT AND THE ARGUMENT OF COUNSEL, THE BOARD CONCLUDED THAT IT WAS NOT ABLE TO MAKE A DETERMINATION AT THIS STAGE AS TO WHETHER THE APPLICANT WAS ENTITLED TO THE RELIEF IT IS SEEKING UNDER SECTION 79(2) UNTIL IT RECEIVED THE LIST OF PERSONS AND CATEGORIES WITH RESPECT TO WHOM THE PARTIES ARE UNABLE TO REACH AGREEMENT AS A RESULT OF THE MEETING REFERRED TO IN PARAGRAPH 2. THIS CONCLUSION WAS CONVEYED TO THE PARTIES BY A LETTER OVER THE SIGNATURE OF THE DEPUTY REGISTRAR DATED JULY 27TH, 1965. THE LETTER ALSO REQUESTED THAT THE PARTIES REPORT THEIR PROGRESS IN THIS MATTER BY SEPTEMBER 15TH, 1965.

THERE WAS FILED WITH THE BOARD A LETTER FROM THE SOLICITOR FOR THE APPLICANT, DATED SEPTEMBER 2ND, ENCLOSING A COPY OF A LETTER FROM THE PRESIDENT OF THE APPLICANT TO THE ASSISTANT TO THE VICE-PRESIDENT-PERSONNEL OF THE RESPONDENT DATED AUGUST 11TH, 1965 AND A COPY OF A LETTER IN REPLY DATED AUGUST 15TH, FROM THE ASSISTANT TO THE VICE-PRESIDENT-PERSONNEL OF THE RESPONDENT TO THE PRESIDENT OF THE APPLICANT. BY THE LETTER DATED AUGUST 11TH, THE APPLICANT REQUESTED THAT THE RESPONDENT MEET WITH THE APPLICANT WITH A VIEW TO REACHING AGREEMENT ON A REVISED LIST. BY THE LETTER DATED AUGUST 18TH. THE RESPONDENT ADOPTED THE POSITION THAT ANY ATTEMPT TO REACH AGREEMENT WITH THE APPLICANT ON A REVISED LIST FOR SUBMISSION TO THE BOARD WOULD CONSTITUTE A JOINT APPLICATION TO THE BOARD AND WOULD INVOLVE AN ADMISSION BY THE RESPONDENT THAT THERE IS AN ISSUE BETWEEN THE PARTIES AS TO WHETHER THE PERSONS IN QUESTION ARE EMPLOYEES, WHICH THE RESPONDENT DENIES. ACCORDINGLY, THE RESPONDENT STATED THAT IT WAS NOT PREPARED TO DISCUSS THE LIST FILED BY THE APPLICANT UNTIL SUCH TIMES AS THE BOARD MAKES A RULING ON THE APPLICATION ON THE EVIDENCE BEFORE IT. THE APPLICANT IN ITS LETTER OF SEPTEMBER 2ND, 1965 HAS ASKED FOR DIRECTION FROM THE BOARD, IN VIEW OF THE POSITION TAKEN BY THE RESPONDENT, AND MORE PARTICULARLY WHETHER THE BOARD WISHES THE RESPECTIVE PARTIES OR EITHER OF THEM TO SUBMIT A REVISED LIST WITHOUT CONSULTATION BETWEEN THEM.

AS OF THE DATE OF THE MAKING OF THIS APPLICATION THE APPLICANT HAD NOT ATTEMPTED TO REACH ANY AGREEMENT WITH THE RESPONDENT WITH RESPECT TO MANY OF THE PERSONS AND CATEGORIES FOR WHOM IT IS SEEKING

A DETERMINATION UNDER SECTION 79(2). THE APPLICATION ACCORDINGLY (AND AS WAS ADMITTED BY COUNSEL FOR THE APPLICANT) WAS PREMATURE. (SEE THE BEAVER WOOD FIBRE CO. LTD. CASE, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-159, \$16,184, C.L.S. 76-711). THE RESPONDENT, HOWEVER, CONSENTED TO THE PROPOSAL OF THE APPLI-CANT THAT THE BOARD HEAR THE APPLICATION ON THE MERITS AND AGREED TO MEET WITH THE RESPONDENT TO DRAW UP A REVISED LIST OF PERSONS IN DISPUTE. THE BOARD HAVING CONCLUDED THAT, ON THE EVIDENCE PRESENTLY BEFORE IT, IT CANNOT MAKE A DECISION ON THE MERITS OF THE APPLICATION, THE CONDITION UNDER WHICH THE RES-PONDENT AGREED TO MEET WITH THE APPLICANT (REFERRED TO IN PARAGRAPH 2) HAS NOT BEEN FULFILLED AND THE RESPONDENT HAS REFUSED TO MEET WITH THE APPLICANT. SINCE THE AGREEMENT BETWEEN THE PARTIES, WHICH WAS THE SOLE BASIS UPON WHICH THE BOARD ENTER-TAINED THE APPLICATION, NO LONGER EXISTS, AND THE APPLICANT AT THIS TIME HAS NOT CURED THE DEFECT IN ITS APPLICATION, I.E., ITS PREMATURITY, THE APPLICATION IS TERMINATED."

10634-65-M: Local Union 633 of the Amalgamaged Meat Cutters and Butcher Workmen of North America AFL-CIO-C.L.C. (Applicant) v. Vaunclair Purveyors Company Limited (Respondent). (WITHDRAWN).

## REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING SEPTEMBER

10599-65-M: FOOD HANDLERS! LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C. (TRADE UNION) v. L & M FOOD MARKET (ONTARIO) LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 440 ).

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5402-62-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Leeds Richardson Company Limited (Respondent) v. International Hod Carriers Building & Common Labourers Union of America, Local 506 (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"On March 15, 1963 the Board certified the United Brotherhood of Carpenters and Joiners of America for a unit of pile drivers in the employ of the respondent. On November 8, 1963 the intervener, the International Hod Carriers Building & Common Labourers Union of America, Local 506, requested the Board to reconsider its decision. This request was based on three other cases which had in the meantime been filed with the Board and which at the time of the request were being heard by the Board. One of these cases, namely, Bermingham, was subsequently dismissed without any decision being rendered on the merits. In another case, namely, Foundation, a decision was reached strictly on the interpretation of a collective agreement filed in that case. Subsequently two more cases were filed with the Board, a second Bermingham case and a case involving

WESTERN PILE AND FOUNDATION, BOTH OF WHICH INVOLVED THE SAME GENERAL QUESTION AS IN THE THREE CASES ORIGINALLY RELIED ON BY THE INTERVENER IN ITS REQUEST FOR RECONSIDERATION. IN THESE CIRCUMSTANCES IT WAS DECIDED TO POSTPONE CONSIDERATION OF THE REQUEST UNTIL DECISIONS WERE REACHED IN THE THREE CASES.

SUBSEQUENTLY ALL THREE CASES WERE ADJOURNED SINE DIE AT THE REQUEST OF THE PARTIES. THIS STATE OF AFFAIRS LASTED UNTIL AUGUST, 1965 WHEN THEY WERE LISTED FOR HEARING BY THE BOARD. FOLLOWING THE HEARING LEAVE WAS GRANTED TO WITHDRAW ALL THREE CASES.

OF THE FIVE CASES THEN, WHICH MIGHT HAVE HAD SOME REFERENCE TO THE REQUEST FOR RECONSIDERATION IN THIS CASE, ONLY ONE WAS DECIDED ON THE MERITS AND THE DECISION IN THAT CASE WAS LIMITED TO THE WORDING OF THE COLLECTIVE AGREEMENT THERE IN QUESTION. ASSUMING, BUT WITHOUT DECIDING THAT THE REQUEST IN THIS CASE WAS A TIMELY ONE, THERE IS NOTHING BEFORE THE BOARD WHICH WOULD WARRANT RECONSIDERATION OF ITS DECISION AND THE REQUEST IS ACCORDINGLY DENIED."

## INDEXED ENDORSEMENTS - CERTIFICATION

10106-64-R: United Packinghouse Food and Allied Workers (Applicant) v. Norfish, Limited (Respondent) v. Canadian Poultry Workers Union (Intervener) v. General Truck Drivers' Union, Local 879, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Intervener).

ON JULY 7, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE INTERVENER, THE EMPLOYEES ASSOCIATION KNOWN AS THE CANADIAN POULTRY WORKERS' UNION, SUBMITS THAT THIS APPLICATION FOR CERTIFICATION IS BARRED BY REASON OF THE EXISTENCE OF A COLLECTIVE AGREEMENT BETWEEN IT AND THE RESPONDENT, EFFECTIVE FROM FEBRUARY 22ND, 1965, TO JULY 31ST, 1966. THE WRITTEN AGREEMENT RELIED ON AS CONSTITUTING THE COLLECTIVE AGREEMENT IN QUESTION BEARS DATE THE 22ND OF FEBRUARY, 1965, AND IS MADE BETWEEN NORFISH, LIMITED AND W. F. KOLBE AND COMPANY, LIMITED AND THE INTERVENER, EMPLOYEES ASSOCIATION. THE SCOPE OR RECOGNITION CLAUSE IN THE AGREEMENT COVERS ALL EMPLOYEES OF THE TWO COMPANIES, "SAVE AND EXCEPT FOREMEN. PERSONS ABOVE THE RANK OF FOREMAN, PERSONS ENGAGED IN THE FISHING DEPARTMENT OF EITHER COMPANY, PERSONS ENGAGED IN THE FARM OPERATIONS OF EITHER COMPANY, OFFICE AND SALES STAFF". THE INTERVENER, EMPLOYEES! ASSOCIATION, HAS HAD VARIOUS AGREEMENTS APPARENTLY PERTAINING TO TERMS OR CONDITIONS OF EMPLOYMENT WITH THE RESPONDENT NORFISH, LIMITED, SINCE IN OR ABOUT 1958.

At or about the time when negotiations for a new agreement were taking place between the intervener employees! association and the respondent in 1963, the intervener, Local 879, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen

AND HELPERS. APPLIED TO THIS BOARD TO BE CERTIFIED AS THE BARGAINING AGENT FOR A UNIT OF TRUCK DRIVERS AND MECHANICS EMPLOYED BY THE RESPONDENT. AT A MEETING BETWEEN THE EXECUTIVE COMMITTEE OF THE EMPLOYEES! ASSOCIATION AND MANAGEMENT HELD ABOUT THIS TIME A DISCUSSION TOOK PLACE BETWEEN THE COMMITTEE AND MANAGEMENT ABOUT THE DESIRABILITY OF RETAINING A LAWYER TO REPRESENT THE ASSOCIATION AND HOW THIS LAWYER WOULD BE PAID FOR HIS SERVICES. ACCORDING TO THE EVIDENCE, THE EXECUTIVE COMMITTEE MADE IT PLAIN TO MANAGEMENT THAT IF THE ASSOCIATION HAD TO PAY FOR THE LAWYER FROM ITS OWN RESOURCES IT WOULD NOT HAVE ENOUGH FOR ITS ANNUAL XMAS PARTY AND THAT THE ASSOCIATION WAS NOT PREPARED TO GIVE UP OR TO SACRIFICE ITS XMAS PARTY FOR THIS PURPOSE. MANAGEMENT, HOWEVER, ASSURED THE MEMBERS OF THE EXECUTIVE THAT IF THE ASSOCIATION ENGAGED THE LAWYER THE RESPON-DENT COMPANY WOULD REIMBURSE IT FOR THE COST OF HIS FEES. THE LAWYER WHO WAS LATER RETAINED AND WHO ACTED FOR THE ASSOCIATION RENDERED HIS ACCOUNT TO THE ASSOCIATION ON OR ABOUT OCTOBER 3RD. 1963. THIS ACCOUNT WHICH WAS FILED IN EVIDENCE SUMMARIZES PROFESSIONAL SERVICES PERFORMED BY THIS LAWYER ON BEHALF OF THE ASSOCIATION BETWEEN JULY 4TH TO AUGUST 21ST. 1963. IT IS SIGNIFICANT THAT THE SERVICES REFERRED TO IN THE ACCOUNT OF THIS LAWYER RELATE TO HIS ACTING BEFORE THIS BOARD AND AN EXAMINER IN CONNECTION WITH THE APPLICATION FOR CERTIFICATION BY THE TEAMSTERS. THIS APPLICATION FOR CERTIFICATION WAS DISMISSED ON THE GROUNDS THAT THE UNIT OF DRIVERS AND MECHANICS ASKED FOR AT THE TIME WAS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. WHILE ONE WITNESS INDICATED THAT THE PURPOSE OF ENGAGING THE LAWYER WAS TO AMEND THE ASSOCIATION'S CONSTITUTION AND TO ASSIST IN THE NEGOTIATION OF A NEW CONTRACT. THERE IS NO MENTION WHATEVER OF ANY SUCH SERVICES BEING PERFORMED IN THE LAWYER'S ACCOUNT.

The Lawyer's account which was in the sum of \$271.45 was paid by the association on or about November 27th, 1963. Sometime Later the secretary of the association received the sum of \$271.45 from the respondent company. This sum was expressed to be a contribution from the company to the association's Xmas party. The employees' association entered into an agreement with the respondent effective from August 1st, 1963, to July 31st, 1964.

WHATEVER RELIANCE MAY BE PUT UPON THE FORM OF THE TRANSACTION IN QUESTION, IT IS, IN OUR VIEW, ABUNDANTLY MANIFEST, THAT IT CONSTITUTES A PAYMENT BY MANAGEMENT OF THE ACCOUNT OF THE LAWYER WHO ACTED FOR THE ASSOCIATION IN THE CONDUCT OF ITS OPPOSITION TO THE TEAMSTERS' APPLICATION FOR CERTIFICATION BEFORE THIS BOARD. ALSO, IN THE CIRCUMSTANCES, IT IS ONLY REASONABLE FOR US TO CONCLUDE THAT BUT FOR THE PROMISE OF MANAGEMENT THAT THE COMPANY WOULD REIMBURSE THE ASSOCIATION FOR THE COST OF THE LAWYER, THE ASSOCIATION WOULD NOT HAVE HIRED A LAWYER OR INVOLVED ITSELF, IF AT ALL, IN ANY EXPENSE IN OPPOSING THE APPLICATION BY THE TEAMSTERS. THERE IS EVERY REASON TO INFER THAT MANAGEMENT'S PROMISE OF FINANCIAL ASSISTANCE AS RESPONSIBLE FOR ENCOURAGING AN ACTIVE INTEREST ON THE PART OF THE COMMITTEE TO OPPOSE THE TEAMSTERS' APPLICATION.

The evidence in this case, therefore, unequivocally demonstrates that in 1963 management provided financial support to the intervener, employees! association, for the purpose of enabling or assisting that association to engaged the services of a lawyer to act on its behalf in opposing a rival organization which was seeking to displace it. There is no question but that such financial support, rendered as it was in the circumstances of this case, plainly comes within the mischief proscribed by the unfair labour practice provisions of section 48 of the Labour Relations Act. In addition, of course, the effect of such support under section 36 of the Act is to disqualify the agreement made between the employer and the association in 1963 as a collective agreement under the Act. Further, such support would, by virtue of section 10, prohibit the Board from certifying the association in an application by it for certification.

WHAT EFFECT, FOR PURPOSES OF THE INSTANT APPLICATION. DOES THE FINANCIAL SUPPORT GIVEN IN 1963 HAVE ON THE STATUS OF THE ASSOCIATION AND ON ITS AGREEMENT OF FEBRUARY 22ND, 1965? IT IS CLEAR THAT THE EFFECT OF THE FINANCIAL SUPPORT RENDERED AND RECEIVED AS IT WAS IN THE CIRCUMSTANCES OF THIS CASE NOT ONLY DISQUALIFIED THE AGREEMENT OF 1963 AS A COLLECTIVE AGREE-MENT UNDER THE ACT BUT ALSO DESTROYED WHATEVER STATUS THE EMPLOYEES ASSOCIATION MAY THEN HAVE GAINED BY VIRTUE OF PRECEDING AGREEMENTS AS AN ORGANIZATION CAPABLE OF ACTING AS A BARGAINING AGENT. OUR CONSIDERATION OF WHETHER THE EMPLOYEES! ASSOCIATION IS NOW CAPABLE OF ACTING AS A BARGAINING AGENT WITHIN THE CONTEMPLATION OF THE ACT, MUST, THEREFORE, BE DETERMINED BY REFERENCE TO THE EVENTS WHICH HAVE SUCCEEDED THE 1963 AGREEMENT. WHILE, ACCORDING TO THE EVIDENCE, THERE HAS BEEN A CHANGE IN THE OWNERSHIP OF THE RESPONDENT AND A CHANGE IN THE PRESIDENCY AND OF ONE OR TWO OTHER OFFICERS OF THE EXECUTIVE OF THE ASSOCIATION, THERE IS NO EVIDENCE WHATEVER TO INDICATE THAT THE ASSOCIATION HAS CHANGED OR DISAVOWED THE POLICY WHICH IT FOLLOWED IN 1963 WITH REGARD TO ITS ACCEPTANCE OF SUPPORT FROM MANAGEMENT OR THAT IT HAS IN ANY WAY REHABILITATED ITSELF OR MADE ANY TRANSITION FROM BEING AN ORGANIZATION IMPLI-CATED IN AND RECEPTIVE TO PRACTICES WITHIN THE MISCHIEF CONDEMNED BY SECTION 10, 36 AND 48 OF THE ACT.

However, even if we could somehow determine on the evidence before us that the association had by virtue of the effluxion of time or otherwise recovered from the disabilities to its status imposed by the financial support given to and received by it in 1963, it would still find itself in difficulty. In this respect, its only claim to bargaining rights would be under the agreement of 1965. In our view, however, the association has failed to prove that this agreement, which, of course, has been in force for less than one year, constitutes a collective agreement within the meaning of the Act. While a document was filed bearing the signatures of employees acknowledging that they accepted the terms of the 1965 agreement no evidence of membership was adduced to

SHOW, WITHIN THE MEANING OF SECTION 1 (1) (c) OF THE ACT, THAT THE ASSOCIATION "REPRESENTS EMPLOYEES OF THE EMPLOYEE".

IN ALL THE CIRCUMSTANCES, AND FOR THE FOREGOING REASONS, WE ARE CONSTRAINED TO CONCLUDE THAT THE AGREEMENT IN QUESTION DOES NOT CONSTITUTE A COLLECTIVE AGREEMENT UNDER THE ACT AND IS, THEREFORE, NOT A BAR TO THIS APPLICATION. FURTHER, WE ARE UNABLE TO FIND THAT THE EMPLOYEES ASSOCIATION HAS ANY STATUS UNDER THE ACT TO ASSERT BARGAINING RIGHTS AS AGAINST THE APPLICANT. IF WE WERE TO ORDER A TWO-WAY REPRESENTATION VOTE (AS HAS BEEN SUGGESTED) GIVING THE EMPLOYEES THE OPPORTUNITY TO EXPRESS THEIR CHOICE AS BETWEEN THE EMPLOYEES ASSOCIATION AND THE APPLICANT, WE WOULD IN EFFECT BE CONFERRING UPON THE EMPLOYEES ASSOCIATION THE STATUS OF A CERTIFIABLE ORGANIZATION. THIS, IN OUR OPINION, WOULD OFFEND THE SPIRIT AND INTENT OF SECTION 10, 36 AND 48 OF THE ACT."

BOARD MEMBER M. C. HAY DISSENTED AND SAID:-

" | DISSENT.

FINANCIAL CONTRIBUTIONS BY COMPANIES TO TRADE UNIONS ARE A COMMON AND EVERY DAY OCCURRENCE IN THE FIELD OF LABOUR RELATIONS. WHETHER SUCH CONTRIBUTIONS ARE DESIGNATED AS MONIES TO HELP DEFRAY THE COST OF THE UNION PICNIC, CHRISTMAS PARTY, CONVENTION ETC., IT IS PATENTLY OBVIOUS THAT SUCH CONTRIBUTIONS DO CONSERVE THE UNION S TREASURY AND THUS MAKES FUNDS AVAILABLE FOR WHATEVER OTHER PURPOSE THE UNION MAY DESIRE TO USE THEM, INCLUDING THE PROTECTION OF ITS BARGAINING RIGHTS. THUS A STRICT INTERPRETATION OF SECTION 48 WOULD MAKE IT AN OFFENCE FOR AN EMPLOYER TO MAKE A FINANCIAL CONTRIBUTION TO A TRADE UNION FOR ANY PURPOSE AND ANY AGREEMENT BETWEEN THEM WOULD BE DEEMED NOT TO BE A COLLECTIVE AGREEMENT BY VIRTUE OF SECTION 36. IF THIS IS SO, MANY EXISTING AGREEMENTS ARE NOT IN FACT COLLECTIVE AGREEMENTS AND THE BARGAINING RIGHTS ESTABLISHED OVER MANY YEARS BETWEEN SOME OF THE MOST PROMINENT TRADE UNIONS AND EMPLOYERS ARE OPEN TO SERIOUS CHALLENGE. IN MY VIEW SUCH A RESULT WAS NEVER INTENDED BY THE LEGISLATURE. INDEED IT SEEMS OBVIOUS THAT THE PURPOSE OF THE ENACTMENT OF SECTIONS 10, 36 AND 48 WAS TO ENSURE THE RIGHT OF EMPLOYEES TO SELECT A UNION OF THEIR OWN CHOICE AS OPPOSED TO THE SELECTION OF A TRADE UNION BY THE EMPLOYER IN A "SWEETHEART" ARRANGEMENT AND TO PREVENT THE COLLUSIVE PARTIES FROM FORECLOSING THE RIGHT OF EMPLOYEES TO CHALLENGE THE RIGHT OF THE TRADE UNION TO REPRESENT THEM BY THE SIMPLE EXPEDIENT OF SIGNING A COLLECTIVE AGREEMENT.

IN THE INSTANT CASE, THE EVIDENCE IS THAT THE CANADIAN POULTRY WORKERS UNION HAS REPRESENTED THE EMPLOYEES AT THE RESPONDENT COMPANY SINCE 1958, DURING WHICH TIME A NUMBER OF COLLECTIVE AGREEMENTS HAVE BEEN NEGOTIATED BY A BARGAINING COMMITTEE COMPOSED OF OFFICERS ELECTED BY THE MEMBERSHIP AT ANNUAL MEETINGS CALLED FOR SUCH PURPOSE. DURING THE NEGOTIATIONS FOR A RENEWAL COLLECTIVE AGREEMENT IN 1963, THE UNION INFORMED

THE COMPANY IT DESIRED THE SERVICES OF A LAWYER TO ASSIST IT
IN ITS NEGOTIATIONS AND TO EFFECT CERTAIN AMENDMENTS TO ITS
CONSTITUTION. IT FURTHER STATED THAT IF IT WERE TO PAY FOR
SUCH LEGAL ASSISTANCE OUT OF ITS TREASURY IT WOULD SO EXHAUST
ITS FUNDS THAT IT WOULD HAVE TO FORGO THE ANNUAL CHRISTMAS PARTY
WHICH IT DID NOT WISH TO DO. ACCORDINGLY IT INVITED THE COMPANY
TO INCREASE IT DONATION TO THE CHRISTMAS PARTY IN AN AMOUNT TO
COVER SUCH LEGAL EXPENDITURE. THIS THE COMPANY AGREED TO DO.

IT IS CLEAR FROM THE EVIDENCE THAT THE LAWYER HIRED BY THE UNION REPRESENTED IT IN OPPOSITION TO AN APPLICATION BY THE TEAMSTERS TO CARVE OUT OF THE BARGAINING UNIT GERTAIN DRIVERS WHOM IT SOUGHT TO REPRESENT. IT IS LIKEWISE CLEAR FROM THE DECISION OF THE BOARD IN THE TEAMSTERS! APPLICATION THAT THE FACTS AS AGREED TO BY THE PARTIES DID NOT SUPPORT THE TEAMSTER APPLICANT AND ITS APPLICATION WAS ACCORDINGLY DISMISSED. THERE IS NO EVIDENCE THAT THE COMPANY WAS AWARE THAT ITS DONATION OF FUNDS WOULD BE USED FOR OTHER THAN THE PURPOSE FOR WHICH THE UNION HAD REQUESTED IT. IN ANY EVENT THE DEFEAT OF THE TEAMSTER APPLICATION WAS OCCASIONED NOT BECAUSE THE INCUMBENT UNION WAS REPRESENTED BY LEGAL COUNSEL, BUT BECAUSE THE FACTS OF THE CASE AS AGREED TO BY THE PARTIES DID NOT SUPPORT THE CONTENTION OF THE APPLICANT UNION. SUCH FACTS WOULD BE GIVEN EQUAL CONSIDER-ATION BY THE BOARD WHETHER THE INCUMBENT UNION WAS REPRESENTED BY COUNSEL OR NOT.

BUT EVEN IF ONE WERE TO ACCEPT THAT THE FINANCIAL CONTRIBUTION MADE BY THE COMPANY TO THE UNION IN 1963 FELL WITHIN THE MISCHIEF CONTEMPLATED BY THE ACT. THE ONLY EFFECT IN MY OPINION WOULD BE THAT THE AGREEMENT THUS TAINTED BY THE ACTION OF THE PARTIES WOULD NOT BE A COLLECTIVE AGREEMENT SO AS TO BAR AN APPLICATION FOR CERTIFICATION BY ANOTHER TRADE UNION OR AN APPLICATION FOR TERMINATION BY EMPLOYEES WITHIN THE BARGAINING UNIT DURING THE TERM OF SUCH AGREEMENT. IT WOULD NOT HOWEVER IPSO FACTO CAUSE THE UNCHALLENGED BARGAINING RIGHTS OF THE INCUMBENT UNION TO DISAPPEAR NOR WOULD SUCH DISABILITY CARRY OVER INTO THE NEXT SUCCEEDING COLLECTIVE AGREEMENT NEGOTIATED BY THE PARTIES. THIS WOULD PARTICULARLY APPLY TO A CASE SUCH AS THE PRESENT ONE WHERE, PRIOR TO THE NEGOTIATION OF THE 1965 COLLECTIVE AGREEMENT, THERE WAS A CHANGE IN THE OWNERSHIP OF THE COMPANY AS WELL AS A CHANGE IN THE PRESIDENCY AND SEVERAL OTHER EXECUTIVE POSITIONS OF THE UNION. THERE IS NO EVIDENCE THAT THE NEW EXECUTIVE OFFICERS OF EITHER PARTY KNEW OF THE PAST OFFENSIVE ACTION OF THEIR PREDECESSORS OR THAT THEY CONDONED SUCH ACTION. IN THESE CIRCUMSTANCES THEY COULD NOT REASONABLY BE EXPECTED TO PURGE THEMSELVES OF A WRONG-DOING OF WHICH THEY WERE UNAWARE AND TO WHICH THEY AS INDIVIDUALS WERE NOT A PARTY.

WITH RESPECT TO THE STATUS OF THE INCUMBENT UNION, THERE WAS FILED WITH THE BOARD A COPY OF ITS CONSTITUTION, AND MINUTES OF MEETINGS. EVIDENCE OF CONTINUOUS REPRESENTATION DATING BACK TO 1958 AND OF SUCCESSION OF COLLECTIVE AGREEMENTS WAS ALSO ADDUCED.

EVIDENCE OF A MEETING OF THE MEMBERSHIP AT WHICH THE TERMS OF THE 1965 COLLECTIVE AGREEMENT NEGOTIATED BY THE UNION WAS APPROVED AND EVIDENCE OF A POLL OF INDIVIDUAL MEMBERS SUBSEQUENT TO THE SAID MEMBERSHIP MEETING TO CONFIRM SUCH APPROVAL WAS TENDERED. IN VIEW OF THIS EVIDENCE THERE IS NO QUESTION IN MY MIND THAT THE INCUMBENT UNION HAS ESTABLISHED ITS STATUS AS THE FREELY CHOSEN BARGAINING REPRESENTATIVE OF THE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT WHICH IT HAS, OVER AN EXTENDED PERIOD OF YEARS, REPRESENTED.

ACCORDINGLY I FIND THAT THE APPLICANT UNION'S APPLICATION IS UNTIMELY BY VIRTUE OF THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE INCUMBENT UNION AND THE RESPONDENT. IN THE ALTERNATIVE, IF THE MAJORITY IS CORRECT IN HOLDING THAT THE EFFECT OF THE INDISCRETION OF THE PREVIOUS OWNER AND THE THEN UNION EXECUTIVE PERSISTS BEYOND THE TERM OF THE AGREEMENT IN WHICH SUCH INDISCRETION OCCURRED, I FIND THAT THE DISABILITY VISITED UPON THEM IS THAT THE 1965 AGREEMENT IS NOT A COLLECTIVE AGREEMENT SO AS TO BAR THE APPLICANT'S APPLICATION AND I WOULD DIRECT A REPRESENTATION VOTE BETWEEN THE APPLICANT AND THE INCUMBENT UNION."

AN EXAMINER WAS SUBSEQUENTLY APPOINTED TO ENQUIRE INTO AND REPORT ON THE COMPOSITION OF THE BARGAINING UNITS SOUGHT BY THE APPLICANT AND THE INTERVENER, AND ON SEPTEMBER 17, 1965 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD HAS CONSIDERED THE CONTENTS OF THE EXAMINER'S REPORT TOGETHER WITH THE ARGUMENTS AND REPRESENTATIONS OF THE PARTIES MADE AT THE HEARINGS HELD HEREIN AND IN THE CORRESPON-DENCE FROM THE PARTIES WITH RESPECT TO THE REPORT. WE ARE IMPELLED TO FIND THAT THE DUTIES AND RESPONSIBILITIES PERFORMED BY THE PERSONS FALLING WITHIN THE BARGAINING UNIT SOUGHT BY THE INTERVENER, GENERAL TRUCK DRIVERS UNION, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, ARE NOT SUCH AS TO SUBSTANTIATE A FINDING THAT SUCH PERSONS COMPRISE AN APPROPRIATE UNIT. IT IS UNFORTUNATE THAT WHAT THE BOARD SAID IN ITS DECISION IN THE EARLIER APPLICATION (6453-63-R) MAY WELL HAVE BEEN TAKEN BY THE INTERVENER, GENERAL TRUCK DRIVERS! UNION, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TO MEAN THAT THE ONLY PROBLEM IN THE WAY OF A BOARD FINDING IN FAVOUR OF THE APPROPRIATENESS OF THE UNIT WAS THE FACT THAT THE PERSONS INVOLVED WERE ALSO DOING SOME PLANT WORK. IN OUR OPINION. HOWEVER, WHILE WE DO FIND THAT THE EMPLOYEES IN QUESTION ARE NO LONGER ENGAGED IN PLANT WORK TO THE EXTENT THAT THIS FACTOR. APART FROM ANY OTHER CONSIDERATION, WOULD INHIBIT A FINDING THAT THEY CONSTITUTE AN APPROPRIATE UNIT, WE ARE NOT SATISFIED THAT THEY, AS A GROUP OF DRIVERS AND MECHANICS, CONSTITUTE A UNIT OF EMPLOYEES OF SUCH DIVERGENT FUNCTIONS AND INTERESTS AS WOULD, HAVING REGARD TO THE BOARD S WELL-SETTLED CRITERIA IN THIS RESPECT, REASONABLY WARRANT THEIR SEGREGATION IN A SEPARATE UNIT FROM THE OTHER EMPLOYEES.

IN THE CIRCUMSTANCES, THE APPLICATION FOR CERTIFICATION BY THE INTERVENER, GENERAL TRUCK DRIVERS! UNION, LOCAL 879, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-

MEN AND HELPERS, MUST BE DISMISSED.

THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PORT DOVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

10285-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. COOEY METAL PRODUCTS LIMITED (RESPONDENT).

On June 14, 1965, FOLLOWING THE FIRST HEARING OF THE APPLICATION WHICH WAS HELD ON JUNE 2, 1965, THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS MADE CHARGES OF IMPROPER PRACTICE
AGAINST THE RESPONDENT. TO SOME EXTENT THESE CHARGES ALSO
IMPLICATE THE OBJECTORS, AND COUNSEL FOR THE OBJECTORS HAS
MADE A DEMAND FOR FURTHER PARTICULARS OF THE ALLEGATIONS. THE
PARTICULARS OF THE CHARGES MADE BY THE APPLICANT ARE AS FOLLOWS:-

ON OR ABOUT THE 20TH OF APRIL, 1965, THE SUPERINTENDENT OF THE RESPONDENT, MR. LLOYD KEMP, MADE ENQUIRIES OF CERTAIN EMPLOYEES AS TO WHETHER OR NOT CERTAIN OTHER EMPLOYEES HAD PREVIOUSLY BEEN UNION MEMBERS. HE ALSO QUESTIONED EMPLOYEES AS TO WHETHER OR NOT THEY HAD RECEIVED ANY UNION PAMPHLETS, LEAFLETS OR HAD HEARD ANY DISCUSSIONS ABOUT THE UNION.

ON OR ABOUT APRIL 21st, 1965, MR. LLOYD KEMP TOLD A GROUP OF EMPLOYEES THAT IF THE APPLICANT UNION WAS SUCCESSFUL IN ITS APPLICATION FOR CERTIFICATION, THE COMPANY WOULD RESTRICT WORK AND WOULD ELIMINATE PRIVILEGES NOW ENJOYED BY EMPLOYEES. HE ALSO THREATENED THAT THE PLANT OR SECTIONS OF IT, MIGHT BE CLOSED AND HE REPEATED THIS THREAT ON APRIL 28TH, 1965.

ON FRIDAY, APRIL 23RD, 1965, MR. LLOYD KEMP SPOKE TO ONE OF THE PERSONS WHO SUBSEQUENTLY CIRCULATED STATEMENTS OF DESIRE, ABOUT TAKING ACTION TO DEFEAT THE APPLICANT'S APPLICATION FOR CERTIFICATION.

ON MONDAY, APRIL 26TH, 1965, MR. LLOYD KEMP QUESTIONED TWO PERSONS OF THOSE WHO WERE CIRCULATING STATEMENTS OF DESIRE AS TO WHO HAD SIGNED THE STATEMENTS.

ON SATURDAY, APRIL 24TH, 1965, MR. HAROLD KEMP, A BROTHER OF THE RESPONDENT'S SUPERINTENDENT, MR. LLOYD KEMP, TOGETHER WITH HIS BROTHER-IN-LAW, MR. HOMER GROSGEAN, APPROACHED SEVERAL EMPLOYEES TO SIGN A STATEMENT OF DESIRE. MR. HAROLD KEMP HAS BEEN THE NIGHT FOREMAN OF THE RESPONDENT FOR MANY YEARS.

IN APPROACHING EMPLOYEES MR. HAROLD KEMP PROMISED THAT IF THEY SIGNED THE STATEMENT OF DESIRE THEY WOULD OBTAIN RAISES. HE ALSO OFFERED AND GAVE THEM LIQUOR. HE FURTHER STATED THAT IF THE APPLICANT UNION SUCCEEDED, MANY OF THE EMPLOYEE BENEFITS SUCH AS PROFIT SHARING, THE CHRISTMAS BONUSES ETC, WOULD BE WITHDRAWN, THAT HOSPITAL AND MEDICAL INSURANCE PREMIUMS WOULD HAVE TO BE PAID BY THE EMPLOYEES RATHER THAN THE COMPANY AND THAT EMPLOYEES WOULD LOSE UP TO \$1,7000.00 A YEAR THROUGH THE CANCELLATION OF OVERTIME. MR. HAROLD KEMP INDICATED THAT HE HAD RECEIVED AUTHORITY FROM MR. I SWAN, THE GENERAL MANAGER OF THE RESPONDENT, TO GUARANTEE THAT ANYONE WHO SIGNED THE STATEMENT OF DESIRE WOULD NOT LOSE HIS JOB.

ANOTHER PERSON ACTIVE IN CIRCULATING STATEMENTS OF DESIRE WAS MRS. PERCY WILSON WHO IS THE WIFE OF THE FOREMAN IN THE BUFFING DEPARTMENT. SHE TOO THREATENED THAT EMPLOYEES WOULD LOSE BENEFITS SUCH AS THE CHRISTMAS BONUSES AND THAT HOSPITAL AND MEDICAL INSURANCE PREMIUMS WOULD NOT, IN FUTURE, BE PAID BY THE COMPANY IF THE APPLICANT UNION SUCCEEDED.

THE APPLICANT HAS REFUSED TO NAME THE PERSON OR PERSONS TO WHOM THE ALLEGED INQUIRIES, THREATS OR INDUCEMENTS WERE DIRECTED.

COUNSEL FOR THE OBJECTORS HAS ARGUED THAT WITHOUT THE NAMES OF THE PERSONS TO WHOM THE INQUIRIES, THREATS OR INDUCEMENTS WERE DIRECTED HE WOULD NOT KNOW THE CASE HE HAD TO MEET AND WOULD BE UNABLE TO PREPARE HIS CASE.

SECTION 48 OF THE BOARD'S RULES OF PROCEDURE PROVIDES IN PART AS FOLLOWS:-

- 48(1) WHERE, AT THE HEARING OF AN APPLICATION OTHER THAN AN APPLICATION,
  - (A) FOR A DECLARATION THAT A STRIKE OR LOCKOUT IS UNLAWFUL; OR
  - (B) FOR CONSENT TO INSTITUTE A PROSECUTION,

A PERSON INTENDS TO ALLEGE IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL FILE A NOTICE OF SUCH INTENTION WHICH SHALL CONTAIN A CONCISE STATEMENT OF THE MATERIAL FACTS UPON WHICH HE INTENDS TO RELY IN SUPPORT OF THE ALLEGATION BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS ARE TO BE PROVED.

48(4) THE STATEMENT REFERRED TO IN SUBSECTION 1 AND 3 SHALL INCLUDE.

- (A) THE TIME WHEN AND THE PLACE WHERE THE ACTS OR OMISSIONS COMPLAINED OF OCCURRED; AND
- (B) THE NAMES OF THE PERSONS WHO ENGAGED IN

THE PARTICULARS WHICH HAVE BEEN FURNISHED WOULD APPEAR TO PROVIDE A CONCISE STATEMENT OF MATERIAL FACTS AND THEY NAME THE PERSONS WHO ENGAGED IN OR COMMITTED THE ALLEGED IMPROPER CONDUCT. IT IS UPON COUNSEL FOR THE OBJECTORS TO SHOW THAT THESE PARTICULARS ARE NOT SUFFICIENT TO ENABLE HIM TO PREPARE HIS CASE. IN SOME OF THE ALLEGATIONS REFERENCE IS MADE TO PERSONS WHO CIRCULATED STATEMENTS OF DESIRE AND IN THIS CASE IT SEEMS PROBABLE THAT THE MATTERS THERE RAISED WILL BE WITHIN THE OBJECTORS! KNOWLEDGE. IN OTHER ALLEGATIONS IT IS TRUE THAT IT MIGHT BE DIFFICULT FOR ONE WHO HAD TO ANSWER THE CHARGES TO IDENTIFY THE INCIDENTS ON WHICH THEY WERE BASED. HOWEVER, IN THESE CASES, THE ALLEGATIONS APPEAR TO IMPLICATE THE RESPONDENT ONLY. THE "EMPLOYEES" TO WHOM INQUIRIES WERE MADE, FOR EXAMPLE, MAY OR MAY NOT BE AMONG THE OBJECTORS. THE ALLEGATIONS ARE AGAINST THE RESPONDENT IN SUCH A CASE AND NOT AGAINST THE OBJECTORS.

IN OUR OPINION, COUNSEL FOR THE OBJECTORS HAS NOT SHOWN THAT THE PARTICULARS WHICH HAVE BEEN GIVEN ARE NOT SUFFICIENT TO ENABLE HIM TO PREPARE HIS CASE. THE BOARD FURTHER CONSIDERS THAT THE GREATEST CAUTION SHOULD BE OBSERVED IN REQUIRING A PARTY TO DIVULGE THE NAMES OF EMPLOYEES WHERE THIS WILL RESULT IN THE DISCLOSURE OF AN EMPLOYEE'S MEMBERSHIP IN A TRADE UNION OR HIS DESIRE NOT TO BE REPRESENTED BY A TRADE UNION.

THE MOTION FOR FURTHER PARTICULARS IS DENIED WITHOUT PREJUDICE TO THE RIGHT OF COUNSEL FOR THE OBJECTORS TO MAKE WHATEVER OBJECTION HE MAY DEEM NECESSARY ON THE HEARING OF THE EVIDENCE."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

IN MY OPINION, COUNSEL FOR THE OBJECTORS WAS ENTITLED TO THE FURTHER PARTICULARS WHICH HE REQUESTED.  $^{\rm II}$ 

On June 22, 1965 the Board further endorsed the Record as follows:-

"At the second hearing of this matter on June 18th, 1965, counsel for the objectors renewed his demand for further particulars and sought to present evidence in support of his demand. After hearing argument from all parties with respect to the motion, the Board recessed and following the recess denied the motion and refused to hear evidence in support of it for reasons given orally at the hearing. The Board undertook to set out these reasons in writing, and they are as follows:-

IN ITS ENDORSEMENT DATED JUNE 14TH, 1965, THE BOARD STATED THAT IT WAS UPON COUNSEL TO SHOW THAT SUFFICIENT PARTICULARS HAD NOT BEEN PROVIDED. COUNSEL COULD HAVE SHOWN EITHER BY REFERENCE TO THE PARTICULARS THEMSELVES OR (IN THE EVENT THAT THE PARTICULARS WERE APPARENTLY SUFFICIENT) BY EVIDENCE THAT THE PARTICULARS WERE IN FACT NOT SUFFICIENT. FULL OPPORTUNITY WAS AFFORDED TO COUNSEL AT THE FIRST HEARING OF THIS MOTION TO PRESENT SUCH EVIDENCE AND ARGUMENT AS THEY THOUGHT FIT AND THE BOARD HAS MADE ITS RULING. HAVING IN MIND THE IMPORTANCE OF PROTECTING THE NAMES OF PERSONS WHOSE SUPPORT FOR OR OPPOSITION TO A TRADE UNION OR TO AN EMPLOYER MAY BE INVOLVED. THE BOARD REJECTED COUNSEL'S MOTION. THE BOARD NOW SEES NO REASON TO REOPEN THE MOTION AND TO ALLOW EVIDENCE NOW TO BE CALLED IN SUPPORT OF IT. THE MOTION IS DENIED. BOARD MEMBER IRWIN DISSENTS FROM THIS RULING. HE WOULD HAVE GIVEN COUNSEL THE OPPORTUN-ITY OF PRESENTING EVIDENCE IN SUPPORT OF THE MOTION.

COUNSEL ARE REMINDED THAT THE APPLICANT HAS AGREED NOT TO SEEK TO AMEND THE ALLEGATIONS, AND RESTS ON THEIR SUFFICIENCY IN THEIR PRESENT FORM. THE BOARD IS PREPARED TO ENTERTAIN ANY MOTION COUNSEL MAY SEEK TO PRESENT WITH RESPECT TO THE EVIDENCE AS IT COMES IN, AND TO DEAL WITH ANY QUESTIONS OF UNFAIR SURPRISE AS THEY MAY ARISE. WE ARE AWARE OF THE DIFFICULTIES THIS MAY CAUSE, BUT FEEL BOUND TO THIS COURSE BY THE POLICY TO WHICH WE HAVE REFERRED."

10348-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. S. S. KRESGE COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE LIST FILED BY THE RESPONDENT CONTAINS THE NAMES OF 124 PERSONS, 72 OF WHOM ARE INCLUDED IN THE BARGAINING UNIT DETERMINED BY THE BOARD . . . FOR THE PURPOSES OF THE COUNT. IN SUPPORT OF ITS APPLICATION THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR 49 PERSONS, 40 OF WHOM ARE IN THE BARGAINING UNIT. THERE WAS ALSO FILED WITH THE BOARD TWO DOCUMENTS (HEREINAFTER REFERRED TO AS PETITIONS) BOTH DATED MAY 10TH, 1965 EXPRESSING OPPOSITION TO THIS APPLICATION. ONE BEARS THE SIGNATURES OF 33 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT (HEREINAFTER REFERRED TO AS PETITION #1) and the other bears the signatures of 6 persons purporting to BE EMPLOYEES OF THE RESPONDENT (HEREINAFTER REFERRED TO AS PETITION #2). Of the total of 39 signatures 29 were identified on petition #1, and one was identified on petition #2. Of the signatures that WERE IDENTIFIED 7 (ALL ON PETITION #1) ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. OF THESE 7 SIGNATURES, 4 OF THEM APPEAR ON A DOCUMENT FILED WITH THE BOARD WHICH REVOKES THEIR SIGNATURES ON

PETITION #1. ALL OF THE SIGNATURES ON THE FORMER DOCUMENT WERE IDENTIFIED BY ROY HIGSON, A BUSINESS REPRESENTATIVE OF THE APPLICANT UNION. IN CALCULATING THE WEIGHT TO BE GIVEN TO THE PETITIONS, IF THE UNREVOKED SIGNATURE OF EVEN ONE OF THE 3 EMPLOYEES, WHO ARE ALSO CLAIMED AS MEMBERS OF THE APPLICANT, IS HELD BY THE BOARD TO WEAKEN OR QUALIFY THE APPLICANT'S EVIDENCE OF MEMBERSHIP, THERE WOULD REMAIN UNCONTESTED EVIDENCE OF MEMBERSHIP FOR LESS THAN 55 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. IN THAT CIRCUMSTANCE, THE BOARD FOLLOWING ITS USUAL PRACTICE WOULD DIRECT THE TAKING OF A REPRESENTATION VOTE TO OBTAIN CONFIRMATORY EVIDENCE OF THE DESIRE OF THE EMPLOYEES TO BE REPRESENTED IN COLLECTIVE BARGAINING BY THE APPLICANT.

Mary Young, who is a member of the office staff, testified that she prepared petition #1 at her home. She brought it to the respondent's premises on Monday, May 10th, and kept it in the credit office where she works. The female employees are required to deposit their purses in the credit office when they report for work. Mrs. Young testfied that she secured most of the 11 signatures which she identified, from employees during their breaks or lunch period when they came to the credit office to get their purses. Her evidence is that she secured the other signatures in other parts of the respondent's premises. All the signatures were secured during working hours. One of the signatures which she identified is that of Alan Dayes, a department manager and a member of management.

OLIVIA KEITH, A SALES EMPLOYEE, TESTIFIED THAT SHE FIRST SAW PETITION #1 WHEN SHE CAME INTO THE CREDIT OFFICE IN THE EARLY AFTERNOON ON MAY 10TH. HER EVIDENCE IS THAT SHE SIGNED THE PETITION AND TOOK IT AWAY AND SECURED OTHER SIGNATURES ON IT.

SHE THEN RETURNED THE PETITION TO MRS. YOUNG IN THE CREDIT OFFICE. LATER IN THE DAY SHE TOOK IT AWAY AGAIN AND SECURED ADDITIONAL SIGNATURES ON IT. ALL OF THE SIGNATURES WHICH SHE IDENTIFIED WERE SECURED IN THE RESPONDENT'S PREMISES, EITHER IN THE CAFETERIA, THE WASHROOM OR ON THE FLOOR OF THE STORE. ALL THE SIGNATURES WERE SECURED DURING WORKING HOURS. OLIVIA TESTIFIED THAT SHE KEPT THE PETITION IN HER POSSESSION OVER NIGHT AND MAILED IT TO THE BOARD THE FOLLOWING MORNING.

THERE APPEARS ON PETITION #1 A SIGNATURE PURPORTING TO BE THAT OF PAUL EDWARDS WHO IS AN ASSISTANT STORE MANAGER, AND A MEMBER OF MANAGEMENT. WHILE, ACCORDING TO THE EVIDENCE, ONLY OLIVIA KEITH AND MARY YOUNG SECURED SIGNATURES ON THE PETITION, NEITHER OF THEM IDENTIFIED THE SIGNATURE OF PAUL EDWARDS.

MARY YOUNG ALSO TESTIFIED THAT SHE PREPARED PETITION #2. HER EVIDENCE IS THAT SHE GAVE THE PETITION TO ANOTHER EMPLOYEE DURING THE AFTERNOON OF MAY 10TH FOR THE PURPOSE OF SECURING SIGNATURES ON IT. THE EMPLOYEE RETURNED TO THE CREDIT OFFICE SOME TIME LATER, WITH FIVE SIGNATURES ON THE PETITION, AND GAVE

IT TO MRS. YOUNG IN THE PRESENCE OF A. JEFFERSON, WHO IS THE PERSONNEL SUPERVISOR AND A MEMBER OF MANAGEMENT. MRS. YOUNG'S EVIDENCE IS THAT JEFFERSON TOOK THE PETITION AND SUBSCRIBED HER SIGNATURE TO IT. ACCORDING TO MRS. YOUNG, NO CONVERSATION TOOK PLACE WITH JEFFERSON ON THAT OCCASION. ONE OF THE 5 OTHER SIGNATURES APPEARING ON PETITION #2 (NONE OF WHICH WERE IDENTIFIED) PURPORTS TO BE THAT OF ERNEST OSBORNE, WHO IS A DEPARTMENT MANAGER AND A MEMBER OF MANAGEMENT.

ON THE TOP OF BOTH PETITIONS APPEARS A STAMP WHICH BEARS THE NAME AND LOCATION OF THE STORE. MRS. YOUNG TESTIFIED THAT SHE HAS CUSTODY OF THE STAMP AND PLACES IT ON COMPANY MATERIAL. HER EVIDENCE IS THAT SHE CANNOT RECALL WHEN SHE PLACED THE STAMP ON THE PETITIONS. OLIVIA KEITH'S RECOLLECTION IS THAT THE STAMP WAS NOT ON PETITION #1 ON THE FIRST OCCASION WHEN SHE CIRCULATED IT, BUT THAT IT WAS ON THE PETITION THE SECOND TIME THAT SHE SECURED SIGNATURES ON IT.

IN THE INSTANT CASE, NOT ONLY WERE ALL THE SIGNATURES SECURED ON THE PETITIONS ON THE PREMISES OF THE RESPONDENT DURING WORKING HOURS, BUT THE PETITIONS APPEAR TO HAVE BEEN AVAILABLE FOR SIGNING IN THE CREDIT OFFICE, WHICH MRS. YOUNG ADMITTED WAS REGULARLY FREQUENTED BY MEMBERS OF MANAGEMENT. MOREOVER, THERE IS EVIDENCE THAT ONE OF THE PETITIONS WAS RETURNED TO MRS. YOUNG BEFORE THE VERY EYES OF A MEMBER OF MANAGEMENT. THERE CAN BE LITTLE DOUBT THAT THE MEMBER OF MANAGEMENT CONCERNED WAS AWARE OF THE NATURE OF THE DOCUMENT, AS, ACCORDING TO THE EVIDENCE, SHE PROMPTLY SUBSCRIBED HER SIGNATURE TO IT. FURTHER, IN ADDITION TO HER SIGNATURE THE PETITIONS BEAR SIGNATURES PURPORTING TO BE THOSE OF THREE OTHER MEMBERS OF MANAGEMENT. IN THESE CIRCUMSTANCES WE CAN ONLY CONCLUDE THAT NOT ONLY WAS THE RESPONDENT AWARE OF THE CIRCULATION OF THE PETITIONS, BUT ALSO IT LENT ACTIVE SUPPORT TO THEM.

THE EVIDENCE MAKES IT ABUNDANTLY CLEAR THAT THE EMPLOYEES WHO CIRCULATED THE PETITIONS MADE NO EFFORT TO CONCEAL THEIR ACTIVITIES FROM MANAGEMENT, A FACT THAT MUST HAVE BEEN APPARENT TO ALL OF THE EMPLOYEES. IN OUR VIEW, THE EMPLOYEES COULD NOT HELP BUT BE AWARE OF AT LEAST THE TACIT SUPPORT OF THE RESPONDENT FOR THE PETITIONS, EVEN IF THEY SIGNED ONE OF THEM PRIOR TO ANY MEMBER OF MANAGEMENT SUBSCRIBING THEIR SIGNATURE TO THE PETITION, OR PRIOR TO THE COMPANY STAMP BEING PLACED ON THEM. IN ALL THE CIRCUMSTANCES, WE ARE NOT PREPARED TO ACCEPT THE PETITIONS AS REPRESENTING A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED THEM. ACCORDINGLY, WE FIND THAT THE PETITIONS DO NOT WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

BOARD MEMBER MORRIS C. HAY DISSENTED AND SAID:-

" | DISSENT.

IN THE COMPLETE ABSENCE OF ANY DIRECT EVIDENCE OF MANAGEMENT PARTICIPATION IN EITHER THE ORIGINATION OR CIRCULATION OF THE PETITIONS IN THIS MATTER, AND HAVING REGARD TO THE FACT THAT THE APPLICANT UNION DID NOT APPARENTLY CONSIDER THAT SUCH MANAGEMENT INTERFERENCE DID IN FACT EXIST, (FOR IT MADE NO CHARGES ALLEGING SUCH ACTIVITY) I AM UNABLE TO CONCUR WITH THE CONCLUSIONS REACHED BY MY COLLEAGUES ON INFERENCES DRAWN FROM THE TOTALITY OF THE

While It is true that the petitions contained the signatures of some management personnel, it is clearly established in evidence that (1) the signatures to the petition were secured in the order in which they appear on the document and (2) that two of such signatures were affexed on the first morning that the petition was circulated and prior to the signature of any member of management. In similar situations in other cases the Board has given weight to signatures appearing before the signature of a management employee while disallowing signatures affixed subsequent to such management employee's signature. In my view this is a proper case in which to follow such practice. It would appear that my colleagues do not subscribe to this view because the two signatures in question were obtained at the credit office which to their mind implies

WHEN ONE CONSIDERS THAT THERE IS NO EVIDENCE THAT ANY MANAGEMENT PERSON WAS PRESENT AT ANY TIME IN THE CREDIT OFFICE WHEN EMPLOYEE SIGNATURES WERE OBTAINED, AND THAT THE EMPLOYEES WHO SIGNED AT THIS LOCATION HAD EVERY JUSTIFIABLE REASON TO BE THERE, FREE FROM THE SUSPICION OF ANY MEMBER OF MANAGEMENT, I AM UNABLE TO CONCLUDE THAT A SIGNATURE SO OBTAINED INDICATES ANY EXPRESS OR TACIT SUPPORT OF MANAGEMENT.

The two signatures placed on the petition on the first morning of its circulation, <u>prior</u> to the signature of any member of management and <u>prior</u> to other subsequent incidents from which my colleagues infer that employees would be led to believe the petition enjoyed the tacit support of management in my view should be allowed, as indicating voluntary expression of their wishes. Accordingly the union's membership position would be less than 55% of the number of employees in the appropriate bargaining unit as determined by the Board. In these circumstances, I would direct a representation vote be taken."

10438-65-R: International Union of Operating Engineers, Local Union 869, Ottawa, Canada (Applicant) v. Metcalfe Realty Company Limited (Respondent) v. Canadian Construction Workers' Union, Division No. 1, N.C.C.L. (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN ITS ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED JULY 23RD, 1965, THE BOARD SET OUT ITS FINDING THAT GEORGE D. HAYES EXERCISED MANAGERIAL FUNCTIONS AND WOULD BE EXCLUDED FROM ANY BARGAINING UNIT FOUND TO APPROPRIATE FOR COLLECTIVE

BARGAINING. THE PARTIES WERE GIVEN AN OPPORTUNITY TO MAKE REPRESENTATIONS TO THE BOARD CONCERNING THE WEIGHT TO BE GIVEN THE PETITION IN OBJECTION TO THIS APPLICATION IN VIEW OF THE BOARD'S FINDING WITH RESPECT TO MR. HAYES' STATUS.

MR. HAYES HAD APPEARED ON THE FIRST HEARING OF THIS MATTER ON BEHALF OF THE EMPLOYEES OPPOSED TO THE APPLICATION AND HAD GIVEN EVIDENCE WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE PETITION.

A HEARING WAS HELD ON AUGUST 25TH, 1965, AT WHICH
TIME EMPLOYEES OF THE RESPONDENT WERE REPRESENTED ONLY BY
MR. RAYMOND PARKER, A MEMBER OF THE MAINTENANCE STAFF, WHO
WOULD, IT APPEARS, NOT BE INCLUDED IN THE BARGAINING UNIT.

ON THE QUESTION OF THE WEIGHT TO BE GIVEN TO THE PETITION IN OPPOSITION TO THE APPLICATION NO EVIDENCE WAS PRESENTED AT THE HEARING HELD ON AUGUST 25TH. IT APPEARS FROM THE EXAMINER'S REPORT IN THIS MATTER THAT MR. HAYES WAS CARRYING OUT THE FUNCTIONS OF HIS PRESENT JOB (WHICH THE BOARD HAS FOUND TO CONSTITUTE MANAGERIAL FUNCTIONS) ONLY IN A PROBATIONARY CAPACITY AT THE TIME OF THE CIRCULATION OF THE PETITION. THE PROBATIONARY CHARACTER OF HIS POSITION, HOWEVER, IS A MATTER ONLY BETWEEN MR. HAYES AND HIS EMPLOYER AND WOULD NOT, UNLESS THE CONTRARY WERE SHOWN, AFFECT THE SUBSTANCE OF HIS DUTIES. THUS CONSIDERING THE EVIDENCE GIVEN AT THE FIRST HEARING AND THE BOARD'S FINDING AS TO MR. HAYES STATUS. WE MUST CONCLUDE THAT THE PETITION WAS CIRCULATED BY A MEMBER OF MANAGEMENT. IN DETERMINING WHETHER OR NOT TO GIVE WEIGHT TO A PETITION INDICATING OPPOSITION TO AN APPLICATION AND CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP SUBMITTED BY AN APPLICANT, THE Board is concerned with the Issue whether or not the DOCU-MENT IS AN EXPRESSION OF THE TRUE WISHES OF EMPLOYEES. WHERE, AS IN THE PRESENT CASE, THE PETITION IS CIRCULATED BY A MEMBER OF MANAGEMENT, THE INFERENCE TO BE DRAWN IS THAT THE DOCUMENT DOES NOT REFLECT THE TRUE WISHES OF THE SIGNATORIES. IN OUR VIEW, HOWEVER, THIS IS A PROBABLE INFERENCE RATHER THAN A NECESSARY CONCLUSION. THUS IT WOULD BE OPEN TO PERSONS OBJECTING TO AN APPLICATION TO ESTABLISH IN SUCH A CASE THAT THE PERSON CIRCULATING THE PETITION WAS REGARDED BY MEMBERS OF THE BARGAINING UNIT AS ONE OF THEMSELVES, EVEN THOUGH THAT PERSON MIGHT BE DETERMINED BY THE BOARD TO BE EXCLUDED FROM THE BARGAINING UNIT AS A MEMBER OF MANAGEMENT. HOWEVER, IN THE PRESENT CASE THERE WAS NO EVIDENCE PRESENTED WHICH WOULD SUPPORT SUCH A CONCLUSION.

ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THE
BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT SUBMITTED TO
THE BOARD AS INDICATIVE OF OPPOSITION BY EMPLOYEES OF THE
RESPONDENT TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBER—
SHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY

FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

FOLLOWING THE HEARING HELD ON AUGUST 25TH, THE BOARD RECEIVED A TELEGRAM. DATED AUGUST 28TH, 1965, FROM ONE OF THE EMPLOYEES IN THE BARGAINING UNIT, STATING THAT THE STATIONARY ENGINEERS HAD JUST BEEN NOTIFIED THAT MR. HAYES HAD BEEN "DISQUALIFIED" AS THE REPRESENTATIVE OF THE OBJECTORS AND REQUESTING A FURTHER HEARING. SINCE THE EMPLOYEES OBJECTING TO THIS APPLICATION APPEARED AT THE FIRST HEARING BY THEIR REPRESENTATIVE MR. HAYES AND SINCE NOTICE WAS GIVEN TO THEM THROUGH THAT REPRESENTATIVE, THE GROUP OF EMPLOYEES OBJECTING TO THIS APPLICATION MUST BE TAKEN TO HAVE HAD KNOWLEDGE OF THE CASE THEY HAD TO MEET AND THEY HAVE HAD FULL OPPORTUNITY TO MAKE REPRESENTATIONS THEREON. IT IS TO BE NOTED THAT FOLLOW-ING THE ISSUING OF THE BOARD'S ENDORSEMENT OF JULY 23RD, STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT SUBMITTED A FURTHER DOCUMENT TO THE BOARD, THUS INDICATING THEIR AWARE-NESS OF THE BOARD'S PROCEEDINGS. THE DOCUMENT WAS SENT FROM THE OFFICE OF A SOLICITOR AND THIS SOLICITOR WAS NOTIFIED OF THE BOARD'S HEARING HELD ON AUGUST 25TH. IN ANY EVENT, THE BOARD'S RULING WITH RESPECT TO MR. HAYES' STATUS DID NOT EFFECT HIS POSITION AS THE REPRESENTATIVE OF THOSE PERSONS ON WHOSE BEHALF HE APPEARED AT THE FIRST HEARING OF THIS MATTER. THE REQUEST FOR A FURTHER HEARING IS THEREFORE DENIED."

10611-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION AFL.CIO.CLC. LOCAL UNION 269 (APPLICANT) v. THE JOHN BERTRAM & SONS CO. LIMITED, C.C.M. CONTRACT SALES DEPARTMENT (RESPONDENT) v. Valley City Lodge, No. 1740, THE INTERNATIONAL ASSOCIATION OF MACHINISTS (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification. Following the denial on August 5th, 1965, of the applicant's request for a pre-hearing vote, a new terminal date was set and the matter was listed for hearing. The applicant seeks a bargaining unit of employees in the C.C.M. Contracting Sales Department of the respondent at Dundas, save and except foremen, persons above the rank of foreman and office staff.

THE INTERVENER DOES NOT APPLY FOR CERTIFICATION BUT INSTEAD MAINTAINS THAT IT IS PRESENTLY THE BARGAINING AGENT FOR THE EMPLOYEES CONCERNED BY VIRTUE OF THE PROVISIONS OF THE RECOGNITION CLAUSE OF A COLLECTIVE AGREEMENT CURRENTLY IN EFFECT BETWEEN THE RESPONDENT COMPANY AND THE INTERVENER. THE CLAUSE IS AS FOLLOWS:-

THE COMPANY RECOGNIZES THAT THE UNION IS THE SOLE AND EXCLUSIVE BARGAINING AGENCY FOR ALL THE EMPLOYEES, AND IS WILLING TO BARGAIN WITH ITS EMPLOYEES THROUGH THE SAID UNION, OTHER THAN THOSE IN THE FOUNDRY AND PATTERN-MAKING DEPARTMENTS AND ALSO WITH THE EXCEPTION

OF THE FOLLOWING CLASSIFICATIONS OF EMPLOYMENT, WHICH ARE NOT SUBJECT TO THE PROVISIONS OF THIS AGREEMENT, NAMELY:- OFFICE ADMINISTRATIVE AND LABORATORY STAFFS, SUPERINTENDENTS, FOREMEN, WATCHMEN, GUARDS AND TIME STUDY MEN. ALL OTHER EMPLOYEES UNDER THE RANK OF FOREMAN ARE RECOGNIZED AS BEING UNDER THE JURISDICTION OF THE UNION.

THE APPLICANT IS ALSO PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT IN WHICH THE APPLICANT IS RECOGNIZED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES BY VIRTUE OF THE FOLLOWING CLAUSE:-

THE COMPANY RECOGNIZES THAT THE UNION IS THE SOLE AND EXCLUSIVE COLLECTIVE BARGAINING AGENCY FOR ALL OF ITS EMPLOYEES IN THE FOUNDRY DEPARTMENT AND IN THE PATTERN SHOP LABOUR CLASSIFICATION, WITH THE EXCEPTIONS OF THE FOLLOWING CLASSIFICATIONS OF EMPLOYMENT WHICH ARE NOT SUBJECT TO THE PROVISIONS OF THE AGREEMENT, NAMELY: ADMINISTRATIVE, OFFICE AND LABORATORY STAFFS, SUPERINTENDENTS, FOREMEN, ASSISTANT FOREMEN, WATCHMEN, GUARDS, AND THOSE HAVING AUTHORITY TO EXERCISE DISCIPLINE OVER EMPLOYEES ON BEHALF OF THE COMPANY.

COUNSEL FOR THE INTERVENER RAISED SEVERAL PRELIMINARY OBJECTIONS TO THIS APPLICATION, AND AFTER HEARING FULL ARGUMENT FROM ALL PARTIES WITH RESPECT TO THOSE OBJECTIONS, THE BOARD RESERVED ITS DECISION UPON THEM AND ADJOURNED THE HEARING.

THERE WERE ESSENTIALLY THREE GROUNDS OF OBJECTION URGED BY THE INTERVENER:

- (1) THE INTERVENER IS PRESENTLY BARGAINING AGENT FOR THE EMPLOYEES IN THE SUGGESTED BARGAINING UNIT, AND SINCE THE COLLECTIVE AGREEMENT IN WHICH THE INTERVENER IS SO RECOGNIZED IS FOR A TERM OF NOT MORE THAN TWO YEARS AND DOES NOT EXPIRE UNTIL DECEMBER 31st, 1965, THE APPLICATION IS UNTIMELY;
- (2) In the alternative, if the applicant itself is bargaining agent for employees in the suggested bargaining unit, the Board has no jurisdiction to entertain this application, having regard to the provisions of section 5(1) of the Labour Relations Act;
- (3) THERE IS A PRIOR PROCEEDING UNDER THE LABOUR RELATIONS ACT BY WHICH THE DISPUTE AS TO THE REPRESENTATION OF THE EMPLOYEES CONCERNED WILL BE RESOLVED. THERE HAS BEEN A JURISDICTIONAL DISPUTES COMMISSIONER APPOINTED AND A HEARING WITH RESPECT TO THIS MATTER HAS BEEN HELD, AND THE BOARD SHOULD NOT DEAL WITH THE MATTER UNTIL THE DECISION OF THE JURISDICTIONAL DISPUTES COMMISSIONER IS GIVEN.

DEALING WITH THE THIRD OBJECTION FIRST. THE BOARD OBSERVES THAT THE MATTER BEFORE THE JURISDICTIONAL DISPUTES COMMISSIONER ARISES, UNDER THE PROVISIONS OF SECTION 66 OF THE LABOUR RELATIONS ACT, UPON A COMPLAINT "THAT AN EMPLOYER WAS OR IS ASSIGNING PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION", OR UPON A SIMILAR COMPLAINT WITH RESPECT TO REQUIREMENTS MADE OF AN EMPLOYER BY A TRADE UNION OR OFFICER THEREOF. THE QUESTION BEFORE THE JURISDICT-IONAL DISPUTES COMMISSIONER, THEREFORE, IS ONE OF THE PROPRIETY OF WORK ASSIGNMENTS IN CERTAIN SITUATIONS. THE APPLICATION BEFORE THIS BOARD, HOWEVER, IS AN APPLICATION FOR CERTIFICATION MADE PURSUANT TO SECTION 5(1) OF THE ACT. SUCH APPLICATION CAN ONLY BE MADE WHERE NO TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OF THE EMPLOYEES OF AN EMPLOYER IN A UNIT CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING AND THE EMPLOYEES IN THAT UNIT ARE NOT BOUND BY A COLLECTIVE AGREEMENT. WHERE THE OBJECTION IS TAKEN THAT THE EMPLOYEES IN A UNIT CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING ARE IN FACT BOUND BY A COLLECTIVE AGREE-MENT, THE ISSUE AS TO THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT ARISES, AND MUST BE DEALT WITH BY THIS BOARD. IT IS CLEAR THAT THE ISSUE IN THESE PROCEEDINGS IS A DIFFERENT ISSUE FROM THAT BEFORE THE JURISDICTIONAL DISPUTES COMMISSIONER. THIS OBJECTION, THEREFORE, FAILS.

AS TO THE SECOND OBJECTION, IT DOES NOT APPEAR THAT EMPLOYEES IN THE PROPOSED BARGAINING UNIT ARE EMPLOYEES "IN THE FOUNDRY DEPARTMENT" OR IN THE "PATTERN SHOP LABOUR CLASSIFICATION" AND THUS WITHIN THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. IT IS NOT THE CASE, THEREFORE, THAT THE APPLICANT ALREADY REPRESENTS THE EMPLOYEES IN QUESTION SO THAT THE BOARD WOULD LACK JURISDICTION UNDER SECTION 5(1) OF THE ACT. THE SECOND OBJECTION, THEREFORE, FAILS.

AS TO THE FIRST OBJECTION, THE BOARD IS OF OPINION THAT THE OBJECTION MUST BE SUSTAINED. IT IS CLEAR FROM THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT THAT THE INTERVENER IS BARGAINING AGENT FOR AN "ALL EMPLOYEE" UNIT OF EMPLOYEES EXCEPTING ONLY THE EMPLOYEES IN TWO NAMED DEPARTMENTS. THE DEPARTMENT FOR WHOSE EMPLOYEES CERTIFICATION IS NOW SOUGHT IS NOT ONE OF THESE NAMED DEPARTMENTS. THE SITUATION WOULD APPEAR TO BE NO DIFFERENT, THEN, FROM THAT WHICH OBTAINS WHEN-EVER AN EMPLOYER, WHOSE EMPLOYEES ARE REPRESENTED BY A TRADE UNION CERTIFIED OR RECOGNIZED AS BARGAINING AGENT FOR "ALL EMPLOYEES" (SUB-JECT TO THE APPROPRIATE EXCEPTIONS), OPENS A NEW DEPARTMENT. THAT IS, THE EMPLOYEES IN THE NEW DEPARTMENT ARE AUTOMATICALLY INCLUDED IN THE BARGAINING UNIT. SUCH IS THE PRESENT CASE. SINCE THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT ARE ALREADY BOUND, AS THE BOARD FINDS, BY A COLLECTIVE AGREEMENT, SINCE THAT AGREEMENT IS FOR A TERM OF NOT MORE THAN TWO YEARS, AND SINCE THE LAST TWO MONTHS OF ITS OPERATION HAVE NOT COMMENCED, THE BOARD HAS NO JURISDICTION UNDER SECTION 5(1) OF THE ACT TO ENTERTAIN THIS APPLI-CATION. THE APPLICATION IS ACCORDINGLY DISMISSED."

10680-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Armco Drainage & Metal Products of Canada Ltd. (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent submits that in order to be permitted to complete the work that it had contracted to do on the project known as Massey Creek Relief Sanitary Truck Sewer and Water-course Improvement Contract, it was compelled by the applicant union to employ members of Local 183 on the project. The respondent argues that in these circumstances, and having regard to the fact that the membership in the applicant of these employees forms the basis of this application, the applicant is not entitled to certification and the application should be dismissed.

ROBERT McAlpine Ltd. (Hereinafter referred to as McAlpine) IS the general contractor on the above-named project. The respondent entered into a sub-contract with McAlpine on January 26th, 1965 for the installation of liner plates which are manufactured by the respondent. The respondent commenced its work on the project on or about July 19th and completed the work on July 29th. The respondent will be returning to the project to do further installation work later this year in order to fulfil its contract.

ON THE EVIDENCE WE FIND THAT THE APPLICANT INFORMED THE RESPONDENT ON JULY 25TH THAT BY THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND MCALPINE IT WAS NECESSARY FOR THE RESPONDENT TO EMPLOY MEMBERS OF THE APPLICANT UNION IN EXECUTING ITS WORK ON THE PROJECT. (BY THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND MCALPINE FILED WITH THE BOARD, THE LATTER AGREES TO EMPLOY ONLY MEMBERS OF THE UNION AND TO ENGAGE ONLY SUBCONTRACTORS WHO EMPLOY MEMBERS OF LOCAL 183 FOR LABOURERS WORK). THE RESPONDENT THEREUPON CONSULTED WITH MCALPINE WHO DIRECTED THE RESPONDENT TO HIRE UNION MEMBERS SUPPLIED BY LOCAL 183 ON THE JOB. ON JULY 26TH THE RESPONDENT ACCORDINGLY REPLACED SIX EMPLOYEES WHO HAD BEEN WORKING ON THE JOB WITH SIX OTHERS SUPPLIED BY THE APPLICANT. THE APPLICANT AGREED TO PERMIT THREE EMPLOYEES OF THE RESPONDENT WHO WERE NOT MEMBERS OF THE APPLICANT UNION TO CONTINUE ON THE JOB. THE INSTANT APPLICATION WAS MADE ON JULY 27TH.

THE HIRING OF MEMBERS OF THE APPLICANT UNION WAS DONE BY THE RESPONDENT ON THE DIRECTION OF MCALPINE AS GENERAL CONTRACTOR, IN ACCORDANCE WITH ARTICLE VII OF THE CONTRACT BETWEEN THEM, WHICH READS IN PART:

THE SUB-CONTRACTOR AGREES THAT IN THE EXECUTION OF THIS CONTRACT HE WILL EMPLOY LABOUR UNDER CONDITIONS SATISFACTORY TO THE CONTRACTOR AND FURTHER AGREES THAT, IN THE EVENT OF LABOUR DIFFICULTIES, DUE TO THE EMPLOYMENT OF MEN BY SUB-CONTRACTOR ON THE WORK, HE WILL MAKE SUCH

ARRANGEMENTS AS MAY BE NECESSARY, IN THE OPINION OF THE CONTRACTOR TO PREVENT DELAY TO THE WORK AND EXPENSE TO THE CONTRACTOR.

WE MUST ASSUME THAT THE RESPONDENT VOLUNTARILY ENTERED INTO THE CONTRACT AND THAT THE RESPONDENT WAS AWARE OF ALL OF ITS TERMS. DURING THE NEARLY SIX MONTHS THAT ELAPSED BETWEEN THE EXECUTION OF THE CONTRACT AND THE COMMENCEMENT OF WORK ON THE PROJECT, HOWEVER, THE RESPONDENT DID NOT QUESTION THE VALIDITY OF, OR OBJECT TO THE PROVISIONS OF ARTICLE VII. IN OUR OPINION, THE RESPONDENT CANNOT NOW CLAIM THAT IT WAS COMPELLED BY THE APPLICANT TO HIRE MEMBERS OF LOCAL 183. ON THE CONTRARY, THE RESPONDENT DID NOT ACCEDE TO THE REQUEST OF THE APPLICANT, BUT RATHER ONLY ACTED ON THE REQUEST OF THE GENERAL CONTRACTOR, AND DID SO IN COMPLIANCE WITH THE PROVISIONS OF THE CONTRACT BETWEEN THEM. THE BOARD THEREFORE FINDS THAT THERE IS NO IMPEDIMENT TO ACCEPTING THE EVIDENCE OF MEMBERSHIP BEFORE IT.

WE WOULD COMMENT THAT THERE IS NO SUGGESTION THAT THE EMPLOYEES IN QUESTION HAVE BEEN COMPELLED TO ACCEPT THE APPLICANT AS THEIR BARGAINING AGENT. WE WOULD MENTION ALSO THAT THERE IS NO INDICATION THAT ANY OF THE EMPLOYEES OF THE RESPONDENT WHO REMAINED ON THE JOB ARE OPPOSED TO THE APPLICANT REPRESENTING THEM AS BARGAINING AGENT IN THEIR RELATIONS WITH THE RESPONDENT.

WE HAVE HAD AN OPPORTUNITY OF READING THE DISSENTING OPINION OF BOARD MEMBER R. W. TEAGLE WHO EXPRESSES THE VIEW THAT THE CONDUCT OF MCALPINE CONSTITUTES EMPLOYER S SUPPORT OF THE APPLICANT IN VIOLATION OF SECTION 10 OF THE LABOUR RELATIONS ACT. IN OUR OPINION, IF THE BOARD WERE TO ACCEPT MR. TEAGLE'S INTER-PRETATION OF SECTION 10, IT MIGHT WELL HAVE THE EFFECT OF MAKING, NOT ONLY THE APPLICANT, BUT MANY OTHER TRADE UNIONS "OUTLAW" ORGANIZATIONS DISQUALIFYING THEM BOTH FROM CERTIFICATION AND FROM ENTERING INTO VALID COLLECTIVE AGREEMENTS. IT WOULD NECESSARILY FOLLOW THAT BY VIRTUE OF SECTION 36 MANY EXISTING COLLECTIVE AGREEMENTS WOULD BE INVALIDATED. IN OTHER WORDS, THE EXISTING PATTERN OF COLLECTIVE BARGAINING IN THE CONSTRUCTION INDUSTRY MIGHT WELL BE COMPLETELY DISRUPTED. IT IS INCONCEIVABLE THAT SUCH A RESULT WAS INTENDED BY THE LEGISLATURE. ACCORDINGLY, IT WOULD REQUIRE CLEAR AND UNEQUIVOCAL LANGUAGE TO PERSUADE US THAT THE CONDUCT OF MCALPINE FALLS WITHIN THE MISCHIEF CONTEMPLATED BY SECTION 10.

WE ALSO WOULD POINT OUT THAT THE REPRESENTATIVE OF THE RESPONDENT, IN MAKING HIS ARGUMENT THAT THE APPLICANT IS NOT ENTITLED TO CERTIFICATION, AT NO TIME SUGGESTED THAT THE CONDUCT OF MCALPINE CONSTITUTED A VIOLATION OF SECTION 10. INDEED, SECTION 10 WAS NOT REFERRED TO AT ALL DURING THE COURSE OF ARGUMENT. IN OTHER WORDS, MR. TEAGLE HAS PLACED AN INTERPRETATION ON SECTION 10, WHICH MAY HAVE FAR REACHING CONSEQUENCES, WITHOUT THE BENEFIT OF ANY ARGUMENT, AND, MORE IMPORTANTLY, WITHOUT AFFORDING THE APPLICANT, WHO IS ADVERSELY AFFECTED, TO MAKE ANY REPLY.

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

A CERTIFICATE WILL ISSUE TO THE APPLICANT."

BOARD MEMBER R. W. TEAGLE DISSENTED AND SAID:-

" | DISSENT.

I WOULD NOT CERTIFY A TRADE UNION UNDER THE CIRCUMSTANCES OF THIS CASE. THE RESPONDENT SIGNED A COMMERCIAL CONTRACT WITH THE GENERAL CONTRACTOR (MCALPINE) AS QUOTED IN PARAGRAPH 7 OF THE MAJORITY DECISION. THIS COMMERCIAL CONTRACT GIVES THE GENERAL CONTRACTOR WHAT APPEARS TO BE UNLIMITED POWER IN ORDERING THE RESPONDENT TO MAKE SUCH ARRANGEMENTS RE LABOUR RELATIONS AS MAY BE DECIDED BY THE GENERAL CONTRACTOR (MCALPINE). THIS COMMERCIAL CONTRACT ALTHOUGH VOLUNTARILY ENTERED INTO BY ARMCO DOES NOT AUTHORIZE MCALPINE TO DO SOMETHING THAT IS UNLAWFUL AND THAT IS GIVE SUPPORT TO A TRADE UNION CONTRARY TO SECTION 10 OF THE LABOUR RELATIONS ACT.

THE RELEVANT ISSUE IN THIS CASE IS WHAT FLOWED FROM THE CONVERSATION BETWEEN MCALPINE AND THE RESPONDENT, ARMCO. THE EVIDENCE SHOWS THAT FOLLOWING THIS CONVERSATION THE RESPONDENT LAID OFF SIX MEN NOT COVERED BY A COLLECTIVE AGREEMENT AND HIRED SIX MEN FROM LOCAL 183. LOCAL 183 ALLOWING THE RESPONDENT TO RETAIN THREE KEY MEN NOT BELONGING TO LOCAL 183. THE HIRING OF SIX MEN FROM LOCAL 183 WOULD NOT HAVE OCCURRED IF NO CONVERSATION HAD TAKEN PLACE BETWEEN THE GENERAL CONTRACTOR, MCALPINE AND THE RESPONDENT (ARMCO), AS THE RESPONDENT WAS SATISFIED WITH THE MEN IT HAD. IN MY OPINION WHAT FLOWED FROM THE CONVERSATION BETWEEN MCALPINE AND THE RESPONDENT, ARMCO, WAS ORGANIZING SUPPORT FOR LOCAL 183 CONTRARY TO SECTION 10 OF THE ACT.

SECTION 10.

The Board shall not certify a trade union

IF ANY EMPLOYER OR AN EMPLOYER'S ORGANIZATION

HAS PARTICIPATED IN ITS FORMATION OR ADMINIS—

TRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER

SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST

ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR,

NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

#### EMPHASIS ADDED

SECTION 10 OF THE ACT AS QUOTED ABOVE IS PLAIN AND UNAMBIGUOUS AND THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER HAS CONTRIBUTED SUPPORT TO IT.

IT WAS INCUMBENT UPON MCALPINE, HAVING SIGNED A COLLECTIVE AGREEMENT WITH LOCAL 183 TO ONLY SUBLET WORK TO SUB-CONTRACTORS WHO

EMPLOYED MEMBERS OF LOCAL 183, TO SEEK OUT A SUB-CONTRACTOR WHO WAS ALREADY IN CONTRACTUAL RELATIONS WITH LOCAL 183. NOT HAVING DONE THIS MCALPINE WAS IN VIOLATION OF ITS COLLECTIVE AGREEMENT WITH LOCAL 183. A COMMERCIAL CONTRACT BETWEEN A GENERAL CONTRACTOR AND A SUB-CONTRACTOR DOES NOT GIVE IT, THE GENERAL CONTRACTOR, THE AUTHORITY TO DO SOMETHING THAT IS CONTRARY TO THE ACT, THAT IS TO GIVE SUPPORT TO A TRADE UNION IN ITS ORGANIZING ENDEAVOURS CONTRARY TO SECTION 10 OF THE ACT. IN MY OPINION, IN THIS CASE, THE GENERAL CONTRACTOR (MCALPINE) WAS MERELY ACTING AS AGENT FOR LOCAL 183 IN ORDER TO FULFIL ITS COLLECTIVE AGREEMENT WITH SAID UNION.

THE MAJORITY DECISION STATES THAT IN ITS OPINION WHAT OCCURRED IN THIS CASE IS NOT SUPPORT FOR A TRADE UNION AS ENVISAGED BY SECTION 10 OF THE ACT. SECTION 10 OF THE ACT SAYS THAT THE BOARD SHALL NOT CERTIFY A TRADE UNION THAT RECEIVES ANY SUPPORT. THE SECTION IS QUITE PLAIN AND THE RELEVANT WORDS ARE HAS CON-TRIBUTED FINANCIAL OR OTHER SUPPORT. | WOULD POINT OUT TO THE MAJORITY THAT WHERE AN EMPLOYEE SPEAKS TO MANAGEMENT AND FROM THE CONVERSATION A PETITION FLOWS IT IS CONSIDERED SUPPORT BY MANAGE-MENT AND NOT THE TRUE WISHES OF THE EMPLOYEES AND THE PETITION IS DISMISSED. IN THE INSTANT CASE THE GENERAL CONTRACTOR SPOKE TO THE RESPONDENT (ARMCO) AND SIX MEMBERS OF THE RESPONDENT WERE LAID OFF CONTRARY TO SECTION 50(A) OF THE ACT AND SIX MEMBERS OF LOCAL 183 WERE HIRED TO TAKE THEIR PLACE. IN SPITE OF THIS, THE MAJORITY FINDS THAT THIS IS NOT SUPPORT FOR LOCAL 183. IT WOULD APPEAR THE BOARD IS SETTING A DOUBLE STANDARD FOR THE MEANING OF THE WORD SUPPORT.

THE MAJORITY DECISION ALSO STATES THAT NO OPPOSITION TO THIS APPLICATION WAS MADE BY THE EMPLOYEES. SURELY THIS IS AN EXERCISE IN SOPHISTRY AS SIX OF THE NINE MEN ON THE DATE OF APPLICATION WERE OBTAINED FROM THE UNION TO REPLACE SIX WHO WERE LAID OFF AND ONE COULD HARDLY EXPECT THEM TO FILE A PETITION IN OPPOSITION TO THE APPLICATION.

It is quite conceivable in this case that an application under section 65 will be filed by the six men who were laid off to make way for members of local  $183_{\circ}$  . The respondent, Armco, in this case could be conceivably found to be in violation of section 50(a) of the Act.

SECTION 50(A)

NO EMPLOYER, EMPLOYER'S ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION

SHALL REFUSE TO EMPLOY OR CONTINUE TO EMPLOY A

PERSON, OR DISCRIMINATE AGAINST ANY PERSON IN

REGARD TO EMPLOYMENT BECAUSE THE PERSON WAS

OR IS A MEMBER OF A TRADE UNION OR WAS OR IS

EXERCISING ANY OTHER RIGHTS UNDER THIS ACT.

These Laid off employees were exercising their right not to belong to a trade union and it is quite conceivable they may have exercised their right to Join a trade union of their own choice as covered by section 3 of the Act, and Joined Local 183 if they had been asked to do so. They were not given this opportunity but were promptly Laid off and replaced by men from Local 183.

A FINDING BY THE BOARD THAT THESE MEN WERE LAID OFF CONTRARY TO THE ACT, AND IT IS DIFFICULT TO SEE ON THE EVIDENCE, HOW ANY OTHER FINDING COULD BE MADE, COULD CONGEIVABLY FIND THE RESPONDENT, ARMCO, OR THE UNION PAYING THESE LAID OFF MEN FOR THE DURATION OF THE JOB AND AT THE SAME TIME THERE WOULD BE AN EQUAL NUMBER OF MEN FROM LOCAL 183 WORKING, DUE TO THE BOARD SECURION.

IN MY OPINION THESE SUB-CONTRACT CLAUSES THAT TELL A SUB-CONTRACTOR WHAT UNION HE MUST HAVE, IF USED FOR ORGANIZING PURPOSES ARE A VIOLATION OF SECTION 3 OF THE ACT.

Section 3. Every person is free to Join a trade union of his own choice and to participate in its Lawful activities.

THE MAJORITY DECISION REFERS TO THE COMMERCIAL CONTRACT BETWEEN THE RESPONDENT AMD MCALPINE AS THE MAIN REASON FOR ITS FINDING. I WOULD POINT OUT THIS CONTRACT WAS FULFILLED WHEN ARMCO HIRED SIX MEN FROM LOCAL 183 AND IS NOT RELEVANT TO THE DECISION IN THIS CASE. THE MAJORITY DECISION IN PARAGRAPH 9 MAKES THE FOLLOWING STATEMENTS.

TO ACCEPT THE MINORITY DECISION OF MR. TEAGLE
"MIGHT WELL HAVE THE EFFECT OF MAKING, NOT ONLY
THE APPLICANT, BUT MANY OTHER TRADE UNIONS "OUTLAW"
ORGANIZATIONS DISQUALIFYING THEM BOTH FROM CERTIFICATION AND ENTERING INTO VALID COLLECTIVE AGREEMENTS"

"IN OTHER WORDS, THE EXISTING PATTERN OF COLLECTIVE BARGAINING IN THE CONSTRUCTION INDUSTRY MIGHT WELL BE COMPLETELY DISRUPTED"

TO THE ABOVE TWO STATEMENTS I MUST REPLY THAT IT WAS HOPED BY MANY EMPLOYERS THAT AS A RESULT OF THE GOLDENBERG ROYAL COMMISSION ON LABOUR RELATIONS IN THE CONSTRUCTION INDUSTRY IN ONTARIO THAT STEPS WOULD BE TAKEN TO REMOVE THE ABUSES OF THE PAST, AND IF THESE ABUSES STILL EXIST I WOULD THINK THE LEGISLATURE WOULD EXPECT THAT THE UNIONS CONCERNED BE OUTLAWED.

THE COMMERCIAL CONTRACT REFERRED TO IN THE MAJORITY DECISION, IN MY OPINION, IS NO MORE THAN AN ATTEMPT TO CONTRACT OUT BEYOND THE SCOPE OF THE LEGISLATION, IF THIS IS VALID ONE MUST ASSUME THAT A NON UNION GENERAL CONTRACTOR WHO BINDS A UNION SUB-CONTRACTOR WITH THIS TYPE OF SUB-CONTRACT COULD ORDER THE SUB-CONTRACTOR TO LAY OFF

ITS UNION MEN AND HIRE NON UNION MEN.

THE MAJORITY DECISION IN PARAGRAPH 10 MAKES THE FOLLOWING STATEMENT.

"WE ALSO WOULD POINT OUT THAT THE REPRESENTATIVE OF THE RESPONDENT, IN MAKING HIS ARGUMENT THAT THE APPLICANT IS NOT ENTITLED TO CERTIFICATION, AT NO TIME SUGGESTED THAT THE CONDUCT OF MCALPINE CONSTITUTED A VIOLATION OF SECTION 10. INDEED, SECTION 10 WAS NOT REFERRED TO AT ALL DURING THE COURSE OF ARGUMENT"

THE REPRESENTATIVE OF THE RESPONDENT ARGUED THAT THE APPLICANT SHOULD NOT BE CERTIFED AS IT WAS CONTRARY TO THE ACT, NO SECTIONS WERE MENTIONED BUT IN WRITING A MINORITY OR MAJORITY DECISION ONE IS NOT CONFINED TO THE ARGUMENT OF THE PARTIES BUT MUST FIND SUPPORT FOR HIS DECISION IN THE EVIDENCE AS IT RELATES TO THE ACT.

FOR THE ABOVE REASONS | WOULD DISMISS THIS APPLICATION IN ORDER TO ADVANCE THE REMEDY TO SUPPRESS THE MISCHIEF OF THESE SUB-CONTRACT CLAUSES."

### INDEXED ENDORSEMENT - PROSECUTION

10536-65-U: A.L. WATSON LIMITED AND A.L. WATSON (APPLICANT) v. THE BRICKLAYERS' UNION No. 2 (AFFILIATED WITH THE BRICKLAYERS, MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA), AND DONALD WILLIAMS (BUSINESS REPRESENTATIVE) (RESPONDENTS).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for consent to institute a prosecution against the respondents on the grounds that, contrary to section 55 of the Labour Relations Act, the respondent union did on May 5th, 1965, call or authorize, and the respondent Williams, as the union's business agent, did, on the same date, counsel, procure, support or encourage an unlawful strike of employees of the corporate applicant. It is alleged that a strike by the said employees of the applicant on May 5th, 1965, was unlawful since these employees were, on that date, bound by a subsisting collective agreement between the applicant and the respondent union.

This application insofar as it was made by the applicant A.L. Watson was dismissed at the outset of the proceedings on the ground that, having regard to the allegations made by him, A.L. Watson obviously had no status as an applicant in this proceeding.

ACCORDING TO THE EVIDENCE, A COLLECTIVE AGREEMENT WAS MADE BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION, OF WHICH THE APPLICANT A.L. WATSON LIMITED WAS A MEMBER AT THE TIME, AND THE RESPONDENT UNION, DATED MAY 1ST, 1963, AND EFFECTIVE TO APRIL 30TH, 1965. THIS

AGREEMENT CONTAINS AN AUTOMATIC RENEWAL PROVISION PROVIDING THAT SHOULD NEITHER PARTY GIVE TO THE OTHER. ON OR BEFORE THE 1ST DAY of March, 1965, a notice of desire to amend or terminate the same. THE AGREEMENT "SHALL BE AUTOMATICALLY RENEWED AND REMAIN IN FORCE FOR A FURTHER PERIOD OF ONE YEAR FROM ITS EXPIRATION DATE". ON A DATE SUBSEQUENT TO THE DATE OF THIS AGREEMENT. A.I. WATSON LIMITED ENTERED INTO A MEMORANDUM OF SETTLEMENT OF CERTAIN DISPUTED MATTERS WHICH, FOR REASONS WHICH WERE NOT DISCLOSED IN THE EVIDENCE. INCORPORATED THE COLLECTIVE AGREEMENT WITH THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION. THIS MEMORANDUM OF SETTLEMENT WAS NOT PRODUCED IN EVIDENCE NOR WAS ANY ORAL TESTIMONY TENDERED AS TO ITS CONTENTS BEYOND THE FACT MERELY THAT IT INCORPORATED THE SAID COLLECTIVE AGREEMENT. WE ARE TOLD BY THE WITNESS A.L. WATSON THAT SOMETIME IN 1963. A.L. WATSON LIMITED CEASED TO BE A MEMBER OF THE GENERAL CONTRACTORS! SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION. HE ALSO TESTIFIED THAT HIS COMPANY HAD NOT SIGNED ANY AGREEMENT WITH THE RESPONDENT UNION THIS YEAR.

IT IS IMMEDIATELY EVIDENT THAT THE EVIDENCE PRESENTED IN THIS CASE WAS IN SEVERAL IMPORTANT RESPECTS DEFICIENT, VAGUE AND CONFUSING. THE BULK OF THE EVIDENCE SEEMED DIRECTED MORE TO JUSTIFYING THE WORK RULES OF THE COMPANY WITH RESPECT TO THE LAYING OF 10" BLOCKS THAN TO ESTABLISHING PRIMA FACIE PROOF OF THE ESSENTIAL INGREDIENTS OF THE OFFENCE. IT NEED HARDLY BE SAID THAT IT IS A CONDITION PRECEDENT TO THE GRANTING OF CONSENT AND INCUMBENT UPON THE APPLICANT TO ESTABLISH AS A MATTER OF PRIMA FACIE PROOF:-

- (A) THAT A STRIKE TOOK PLACE;
- (B) THAT IT WAS BROUGHT ABOUT BY THE EFFORTS OF THE RESPONDENTS; AND
- (c) THAT THE STRIKE TOOK PLACE IN SUCH CIRCUMSTANCES
  AND AT A TIME WHEN IT WAS PROHIBITED BY
  SUBSECTIONS (1) OR (2) OF SECTION 54 OF THE
  LABOUR RELATIONS ACT.

APART FROM THE BALD STATEMENT OR OPINION OF THE WITNESS A.L. WATSON, WHICH OBVIOUSLY INVOLVES A MIXED QUESTION OF LAW AND FACT AND ONE OF THE ISSUES COMMITTED TO THE BOARD ITSELF TO DECIDE, THAT THE COLLECTIVE AGREEMENT WAS IN OPERATION ON MAY 5TH, 1965, NO EVIDENCE WHATSOEVER WAS ADDUCED BY THE APPLICANT TO ESTABLISH THIS SIGNIFICANT FACT. THE EVIDENCE IS PLAINLY DESTITUTE OF ANY FACTS FROM WHICH IT CAN BE FOUND THAT NOTICE WAS NOT GIVEN BY ONE PARTY TO THE OTHER TO AMEND OR TERMINATE THE AGREEMENT OF 1963. IN THE CIRCUMSTANCES, WE SEE NO BASIS WHY, IN THE ABSENCE OF EVIDENCE EITHER WAY, THAT THE NEGATIVE FACT THAT NO NOTICE WAS GIVEN SHOULD BE ASSUMED IN PREFERENCE TO THE POSITIVE FACT THAT NOTICE WAS GIVEN. IN VIEW OF THE LACK OF EVIDENCE ON THIS POINT THE MATTER IS EQUALLY CONSISTENT WITH EITHER CONCLUSION. INSOFAR AS THE EVIDENCE PLACED BEFORE US IS CONCERNED, THEREFORE, AND OUR DECISION MUST REST ON THAT ALONE, WE DO NOT KNOW WHETHER THE COLLECTIVE AGREEMENT OF

1963 WAS OR WAS NOT IN EFFECT ON MAY 5TH, 1965.

Counsel for the APPLICANT IN HIS ARGUMENT CONTENDED THAT IF THE APPLICANT HAD FAILED TO PROVE THE EXISTENCE OF A COLLECTIVE AGREEMENT ON THE DATE OF THE STRIKE, THE BOARD, IN THE CIRCUMSTANCES. MUST INFER THAT THE CONCILIATION PROCEDURE COULD NOT HAVE BEEN COMPLETED OR EXHAUSTED. FOLLOWED BY THE EXPIRY OF SEVEN DAYS THERE-AFTER, BY MAY 5TH, 1965, THE DATE OF THE ALLEGED STRIKE. CONTRARY TO THE ARGUMENT MADE BY COUNSEL FOR THE APPLICANT. IT IS OUR VIEW THAT THE EVIDENCE IS DEFICIENT OF ANY FACTS FROM WHICH IT COULD BE FOUND OR INFERRED EITHER THAT CONCILIATION SERVICES HAD OR HAD NOT BEEN INVOKED OR THAT THEY HAD OR HAD NOT BEEN EXHAUSTED AND AT LEAST SEVEN DAYS HAD ELAPSED PRIOR TO MAY 5TH. 1965. AS PROVIDED IN SECTION 54(2) OF THE LABOUR RELATIONS ACT. FOR ALL WE KNOW, ON THE EVIDENCE BEFORE US. ONE OR OTHER OF THE PARTIES COULD HAVE OBTAINED CONCILIATION SERVICES DURING THE EXISTENCE OF THE COLLECTIVE AGREEMENT OF 1963. AND THOSE SERVICES COULD HAVE BEEN EXHAUSTED OR COMPLETED SOME TIME PRIOR TO THE EXPIRATION DATE OF THE AGREEMENT. ON THIS BASIS, FOR ALL WE KNOW. THE SEVEN DAY PERIOD FOLLOWING THE COMPLETION OF EXHAUSTION OF CONCILIATION SERVICES PROVIDED IN SECTION 54(2) OF THE ACT COULD HAVE ELAPSED BY MAY 5TH, 1965, IN WHICH EVENT A STRIKE ON THAT DATE BY EMPLOYEES OF THE APPLICANT WOULD HAVE BEEN LAWFUL. AGAIN WE SEE NO BASIS WHY IN THE ABSENCE OF EVIDENCE ONE WAY OR THE OTHER. THAT THIS BOARD SHOULD ASSUME FACTS WHICH ASSIST THE APPLICANT AND PREJUDICE THE RESPONDENTS. IF SUCH FACTS EXISTED IN FAVOUR OF THE APPLICANT IT WOULD OBVIOUSLY HAVE BEEN A VERY SIMPLE MATTER TO HAVE PROVED THEM.

THE BOARD IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, O.L.R.B. MONTHLY REPORT, APRIL 1964, AT P. 39, HAD OCCASION TO REVIEW SOME OF THE PRINCIPLES WHICH IT APPLIES IN DECIDING WHETHER TO GRANT ITS CONSENT TO THE INSTITUTION OF A PROSECUTION. THE MAJORITY THERE STATED AS FOLLOWS:-

WHILE THE BOARD IS NOT EMPOWERED. NOR CALLED UPON. TO MAKE A DECISION ON THE MERITS OF THE CASE IT APPROACHES THE QUESTION AS TO WHETHER THE EVIDENCE IS SUFFICIENT FOR IT TO GRANT ITS CONSENT AS A JUDICIAL AND NOT AS AN ADMINISTRATIVE CONSIDERATION. APART FROM THE QUESTION AS TO WHETHER. AS A MATTER OF DIS-CRETION, THE BOARD WILL GRANT CONSENT UNDER SECTION 74 (SEE FOR INSTANCE THE CANAL CARTAGE LTD. CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1962, P. 251), IT GENERALLY REQUIRES. AS A CONDITION PRECEDENT TO THE GRANTING OF CONSENT, THAT THE APPLICANT ADDUCE SUFFICIENT EVIDENCE TO ESTABLISH A PRIMA FACIE CASE UPON WHICH A MAGISTRATE MIGHT FIND A VIOLATION OF THE ACT. IN SOME RESPECTS THE FUNCTION OF THE BOARD AND ITS REQUIREMENTS AS TO PROOF ARE ANALOGOUS TO THAT OF A MAGISTRATE IN A PRELIMINARY HEARING.

WHILE IN APPLICATIONS FOR CONSENT TO PROSECUTE THE WEIGHT OF RELIABLE EVIDENCE NEED NOT GO TO THE LENGTH OF PROVING THE COMMISSION OF THE OFFENCE, IT MUST. EXCEPT IN SPECIAL CIRCUMSTANCES OF WHICH THERE ARE NONE IN THE PRESENT CASE, SHOW A PRIMA FACIE CASE (ASSUMING THE VALIDITY OF AT LEAST ARGUABLE POINTS OF LAW PUT FORWARD IN SUPPORT THEREOF). THAT THE RESPONDENT (IN THE RESTRICTIVE LEGAL SENSE AND WITHOUT CONSIDERING THE PREPONDERANCE OF EVIDENCE) IS PROBABLY GUILTY OF THE OFFENCE CHARGED. (SEE THE JOHNSON - PERINI - KIEWIT CASE. BOARD FILE 1485-61-U: DOMINION STEEL & COAL CORPORATION LTD. CASE, O.L.R.B. MONTHLY REPORT, DECEMBER, 1961, P. 318: THE SEVEN-UP BOTTLING COMPANY CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, VOL. 1, PP. 16,227; THE SUPERIOR BOX COMPANY LTD. CASE, C.C.H. IBID., PP. 16.189: Byers Construction Co. Limited Case, C.C.H. CANADIAN LABOUR LAW REPORTER, 1955-59 TRANSFER BINDER, PP. 16.088: NORFOLK GENERAL HOSPITAL CASE, BOARD FILE 12343-57: THE CANADIAN PACIFIC RAILWAY COMPANY (ROYAL YORK HOTEL) CASE, BOARD FILE 1643-61-U; THE CANADIAN INDUSTRIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, November, 1961, p. 285; Western Freight Lines Limited CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1961, p. 171).

IN DETERMINING QUESTIONS RELATING TO THE ADMISSIBILITY AND RELIABILITY OF EVIDENCE IN APPLICATIONS FOR CONSENT TO PROSECUTE. THE BOARD GENERALLY FOLLOWS THE SAME RULES OF EVIDENCE AS ARE APPLIED BY COURTS IN CRIMINAL PROCEED-INGS. FOR INSTANCE, JUST AS HEARSAY TESTIMONY IS NOT ADMISSIBLE ON A PRELIMINARY INQUIRY BY A MAGISTRATE (SEE R. v. Smith. 77 C.C.C. 394). THE BOARD DOES NOT ADMIT SUCH TESTIMONY TO PROVE THE TRUTH OF THE MATTER STATED IN PROCEEDINGS BEFORE IT. FURTHER, OF COURSE SINCE THE PROCEEDINGS IS OF A QUASI-CRIMINAL NATURE, THE BOARD, IN SUCH APPLICATIONS, ALSO ADOPTS THE SAME CAUTIOUS APPROACH TO THE EVIDENCE AND IS GUIDED BY THE SAME PRINCIPLES AS GOVERN A JUDGE IN A CRIMINAL CASE IN ESTIMATING THE WORTH AND RELIABILITY OF TESTIMONY. IN THIS RESPECT, FOR INSTANCE, THE BOARD CONSIDERS, AMONG OTHER THINGS, WHETHER THE EVIDENCE ADDUCED HAS BEEN BROUGHT FORWARD IN THE FORM WHICH AND BY THE PERSONS WHO, IN SO FAR AS THE CIRCUMSTANCES ADMIT, CAN BEST VOUCH FOR ITS ACCURACY AND RELIABILITY.

REFERENCE MAY ALSO BE MADE TO THE DECISION OF THE BOARD IN THE JOHNSON - PERINI - KIEWIT CASE, BOARD FILE 1485-61-U, WHERE THE BOARD DISMISSED AN APPLICATION FOR LEAVE TO PROSECUTE FOR AN OFFENCE UNDER SECTION 50 OF THE ACT BECAUSE OF THE FAILURE OF THE APPLICANT TO ESTABLISH FACTS FROM WHICH IT COULD BE FOUND THAT THE STRIKE WAS UNLAWFUL.

IN OUR OPINION IT WOULD BE CONTRARY TO THE BOARD'S WELL— SETTLED PRACTICE OF REQUIRING <u>PRIMA FACIE</u> PROOF OF ALL THE ESSENTIAL INGREDIENTS OF THE OFFENCE FOR WHICH CONSENT IS SOUGHT TO PROSECUTE, AND IN DEROGATION OF ITS FUNCTIONS TO DECIDE THAT QUESTION FOR ITSELF AS A MATTER OF LAW, FOR THE BOARD, IN THE PARTICULAR CIRCUMSIANCES OF THIS CASE, TO ACCEPT THE MERE STATEMENT OF THE WITNESS  $\ell$ .1. Watson, without any evidence of facts in support thereof, that the collective agreement of 1963 was still in operation on May 5th, 1966.

Apart from any other consideration, the applicant has manifestly failed to establish by  $\frac{\text{PRIMA FACIE}}{1965}$ , took place in such circumstances and at a time when it would have been prohibited by subsections (1) or (2) of section 54 of The Labour Relations Act.

THE APPLICATION MUST BE DISMISSED. "

### INDEXED ENDORSEMENT - SECTION 79A

10599-65-M: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C. (TRADE UNION) v. L & M FOOD MARKET (ONTARIO) LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference from the Minister of Labour to the Board pursuant to section 79a of the Labour Relations Act. The Question referred to the Board in this case is whether, in the circumstances outlined hereafter, the union concerned, namely the Food Handlers' Local Union 175, of the Amalgamated Meat Cutters and Butcher Workmen of North America, was entitled to give, as it has purported to do, notice to the employer, L & M Food Market (Ontario) Limited, of its desire to bargain pursuant to the provisions of section 47a of the Act.

THE FACTS WHICH WERE AGREED TO BY ALL PARTIES WERE AS FOLLOWS. FOR SOME 4 TYEARS PRIOR TO MARCH 16TH, 1965, STEINBERG'S LIMITED (HEREINAFTER CALLED STEINBERG'S) OPERATED AND CARRIED ON A FOOD MERCHANDISING BUSINESS IN CERTAIN STORE PREMISES OWNED BY IT AT FERGUS, ONTARIO. ON OR ABOUT THE 31ST AUGUST, 1964, BOTH THE FOOD HANDLERS' LOCAL UNION AND LOCAL UNION 633, ALSO OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA. ENTERED INTO A SINGLE COLLECTIVE AGREEMENT WITH STEINBERG'S, EFFECTIVE, WITH CERTAIN AUTOMATIC CONTINUANCE PROVISIONS BEYOND THAT DATE, TO MARCH 31ST, 1966. THE UNIT OF EMPLOYEES FOR WHICH LOCAL 175 IS THE BARGAINING AGENT IS DESCRIBED IN THE AGREEMENT AS "ALL EMPLOYEES IN THE RETAIL STORES OF STEINBERG'S LIMITED (ONTARIO DIVISION) - - " EXCLUDING MEAT DEPARTMENT EMPLOYEES AND OTHER EXCEPTIONS NOT HERE MATERIAL. THE UNIT FOR WHICH LOCAL 633 IS THE BARGAINING AGENT IS DESCRIBED IN THE AGREEMENT AS "ALL MEAT DEPARTMENT EMPLOYEES OF STEINBERG'S LIMITED (ONTARIO DIVISION) - - " WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL.

IN OR ABOUT MARCH 1965, STEINBERG'S AS LESSOR ENTERED INTO A TRANSACTION WITH L & M FOOD MARKET (ONTARIO) LIMITED (HEREINAFTER CALLED L & M) UNDER WHICH L & M BECAME THE TENANT OF STEINBERG'S STORE PREMISES IN QUESTION AT FERGUS UNDER A FIVE YEAR LEASE, DATED MARCH 3RD, 1965. WHILE THE LEASE WAS NOT PRODUCED IN EVIDENCE, IT WAS AGREED THAT UNDER ITS TERMS L & M ALSO LEASED CERTAIN STORE EQUIPMENT FROM STEINBERG'S. INCLUDING CASH REGISTERS, REFRIGERATORS AS WELL AS OTHER ITEMS OF EQUIPMENT WHICH WERE NOT PARTICULARIZED. IN ACCORD-ANCE WITH THE TRANSACTION BETWEEN THEM. L & M ALSO PURCHASED CERTAIN OF STEINBERG'S STOCK OF STORE MERCHANDISE. STEINBERG'S, HOWEVER. DID NOT SELL L & M ANY OF ITS OWN BRAND-NAMED MERCHANDISE. BUT REMOVED THIS FROM THE STORE WHEN IT VACATED THE PREMISES AT THE COMMENCEMENT OF THE LEASE. L & M TOOK POSSESSION OF THE PREMISES ON AND THE CLOSING DATE OF THE TRANSACTION WAS MARCH 19TH. 1965. SOME THREE DAYS LATER AND FOLLOWING CERTAIN ALTERATIONS TO THE PREMISES BY L & M, THE STORE WAS RE-OPENED AND BUSINESS OPERATIONS WERE RESUMMED BY AND IN THE NAME OF L & M FOOD MARKET (ONTARIO) LIMITED.

IT WAS AGREED BY THE PARTIES THAT THE TRANSACTION IN QUESTION DID NOT PROVIDE FOR THE PAYMENT OF ANY CONSIDERATION TO STEINBERG'S FOR ITS GOODWILL, NOT DID IT IMPOSE ANY RESTRICTION OF STEINBERG'S FROM OPENING AND OPERATING A FOOD MERCHANDISING STORE IN COMPETITION TO L & M NEXT TO OR IN THE SAME AREA AS THE LEASED STORE.

APART FROM THE FOREGOING ORAL AGREEMENT OF THE PARTIES AS TO THE NATURE AND EFFECT OF THE TRANSACTION BETWEEN STEINBERG'S AND L & M, NO FURTHER EVIDENCE, DOCUMENTARY OR OTHERWISE, WAS ADDUCED CONCERNING ANY OTHER DETAILS OF THE TRANSACTION BETWEEN THE TWO COMPANIES IN QUESTION.

OF THE STAFF OF EMPLOYEES HIRED BY L & M TO WORK IN THE STORE ONE PERSON, A CASHIER, HAD FORMERLY WORKED IN THE STORE BEFORE IN THE EMPLOY OF STEINBERG'S. ALL OTHER EMPLOYEES OF STEINBERG'S, HOWEVER, WHO HAD WORKED AT THIS STORE WERE, UPON THE CESSATION OF ITS OPERATIONS AT THE STORE, TRANSFERRED BY STEINBERG'S TO ITS STORES IN OTHER LOCATIONS.

Counsel for the respondent contends that the transaction in Question does not constitute the sale of a business within the meaning of section 47a. In this respect, he argues and relies on the dissenting view of Board Member Morris C. Hay in the Dutch Boy Food Markets Case (Board file 10220-65-M). Counsel argues that the transaction on its face manifestly has nothing to do with the business of Steinberg's but embraces only the lease of the building and certain chattels therein and the sale of certain stock-in-trade. It cannot, he contends, on the facts before the Board, be construed as a sale of the business formerly carried on by Steinberg's. He argues that the absence of any provision in the transaction for the payment of goodwill and the fact that the transaction does not contain

ANY RESTRICTIVE COVENANT PRECLUDING STEINBERG STORM OPERATING A STORE IN COMPETITION TO THAT OF L & M ARE FURTHER FACTORS WHICH SERVE TO NEGATE ANY CHARACTERIZATION OF THE TRANSACTION AS A SALE OF THE BUSINESS. HE ARGUES THAT IF THE PARTIES HAD INTENDED TO EFFECT THE DISPOSITION OF THE BUSINESS AS DISTINCT FROM THE TRANSFER OF MERE ASSETS, THEY WOULD CERTAINLY HAVE INCLUDED SOME SUCH PROVISIONS IN THE TRANSACTION.

THE REPRESENTATIVE FOR THE TRADE UNION, ON THE OTHER HAND ARGUES THAT THE FACTS OF THIS CASE ARE, IN ALL RELEVANT RESPECTS, SIMILAR TO THE FACTS IN THE <u>DUTCH BOY FOOD MARKETS CASE</u>. IT IS HIS CONTENTION, THEREFORE, FOLLOWING THE REASONING OF THE MAJORITY IN THE <u>DUTCH BOY CASE</u>, THAT THE TRANSACTION CAN ONLY BE CHARACTERIZED AS THE SALE OF A BUSINESS UNDER SECTION 47A.

THE BOARD IN THIS CASE, OF COURSE, HAS NOT BEEN FURNISHED WITH WHAT WOULD OBVIOUSLY HAVE BEEN THE BEST EVIDENCE OF THE TRANSACTION, NAMELY THE DOCUMENTS THEMSELVES. INSTEAD, NO DOUBT FOR GOOD REASONS BEST KNOWN TO THEMSELVES. THE PARTIES BY THEIR AGREEMENT WERE CONTENT THAT WE SHOULD DECIDE THE QUESTION IN ISSUE ON THE BASIS OF THEIR ORAL AGREEMENT OF FACT. ON OUR UNDERSTANDING OF THE TRANSACTION. AS GLEANED FROM THEIR ORAL AGREEMENT OF FACT, WE ARE CONSTRAINED TO FIND THAT THE PURPOSE AND EFFECT OF THE TRANSACTION WAS NOT ONLY TO EFFECT THE TRANSFER TO L & M OF THE ASSETS IN QUESTION, BUT THAT THE PARTIES ALSO INTENDED TO DO AND DID. FOR ALL PRACTICAL PURPOSES. IMPLEMENT THE DISPOSITION TO L & M, IN SO FAR AS THAT COULD BE DONE, OF THE BUSINESS WHICH HAD BEEN ASSOCIATED WITH THE USE AND OPER-ATION OF THE ASSETS IN QUESTION. IT IS OBVIOUS, OF COURSE, THAT THE PRESENCE OF CLAUSES IN THE TRANSACTION PROVIDING FOR THE PAYMENT OF CONSIDERATION FOR GOODWILL AND RESTRICTING STEINBERG S FROM CARRYING ON A COMPETING BUSINESS WOULD HAVE ADDED TO THE UNION'S ARGUMENT THAT THE TRANSACTION CONSTITUTES THE SALE OF A BUSINESS. IN OUR OPINION, HOWEVER, THE BARE FACT OF THE OMISSION OF SUCH CLAUSES, IN THE CIRCUMSTANCES OF THIS CASE, IS OF ITSELF OF LITTLE OR NO PROBATIVE VALUE IN REACHING A CONCLUSION AS TO CHARACTER OF THE TRANSACTION. PLAINLY, THESE CLAUSES COULD HAVE BEEN OMITTED FOR A NUMBER OF REASONS WITHOUT DEROGATING FROM THE CHARACTER OF THE TRANSACTION AS THE SALE OF A BUSINESS.

HAVING REGARD TO THE CONSTRUCTION GIVEN TO THE SECTION BY THIS BOARD IN THE THORCO MANUFACTURING LIMITED CASE (BOARD FILE 9338-64-C) AND IN THE DUTCH BOY FOOD MARKETS CASE (IBID), IT IS OUR OPINION THAT THE TRANSACTION CONTAINS ALL THE INDICIA NECESSARY TO CHARACTERIZE THE TRANSACTION AS A DISPOSITION OF A BUSINESS TO L & M WITHIN THE MEANING OF SECTION 47A OF THE ACT.

IN THE RESULT, IT IS OUR DECISION ON THE QUESTION REFERRED TO US BY THE MINISTER THAT:-

(a) THE FOOD HANDLERS! LOCAL UNION 175 CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT IN A LIKE BARGAINING UNIT

TO THAT FOR WHICH IT IS THE BARGAINING AGENT OF THE EMPLOYEES OF STEINBERG'S.

- (B) THE LIKE BARGAINING UNIT OF THE EMPLOYEES IN THE BUSINESS ACQUIRED BY THE RESPONDENT FROM STEINBERG'S CONSTITUTES ALL EMPLOYEES OF THE RESPONDENT AT ITS STORE IN FERGUS, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, OFFICE STAFF, STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF—SCHOOL HOURS AND DURING SCHOOL VACATION PERIODS.
- (c) The Food Handlers Local Union 175 was entitled to give, as it has done, a written notice to the respondent of its desire to bargain with a view to making a collective agreement."

BOARD MEMBER H. F. IRWIN DISSENT AND SAID:-

" | DISSENT.

I DO NOT CONSIDER THAT THIS TRANSACTION CONSTITUTES A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, AND I WOULD REPORT MY FINDING TO THE MINISTER ACCORDINGLY."

## STATISTICAL TABLES FOR SEPTEMBER 1905

### TADLE I

# WELL ATTEMS AND COMPLAINTS FILLD WITH THE ONLARS LABOUR RELATIONS BOARD

			Number Filed			
			SEPTEMBER 1965	lst 6 Months of 1965-66		
•	CERTIFICATION		77	508	440	
11.	DECLARATION TERMIN BARGAINING RIGHT		2	30	48	
	DECLARATION OF SUC STATUS	CESSOR	-	5	2	
IV.	DECLARATION THAT S UNLAWFUL	TRIKE	1	29	26	
٧.	DECLARATION THAT L OUT UNLAWFUL	ock-	1	1	5	
VI.	Consent to Prosecu	ΤΕ	3	33	48	
VII.	COMPLAINT OF UNFAI PRACTICE IN EMPL (SECTION 65)		0			
	,		8	65	88	
VIII.	MISCELLANEOUS			31		
		TOTAL	97	702	668	

## TABLE 11

# HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Numb	ER
SEPTEMBER	1st 6 MONTHS	OF FISCAL YEAR.
1965	1965-66	1964-65

HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD

TABLE III

# APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

## BOARD BY MAJOR TYPES

		NUMBER	DISPOSED OF	
			1965-66	FISCAL YR. 1964-65
١.	CERTIFICATION	79	517	424
11.	Declaration Terminating Bargaining Rights	5	30	55
111.	Declaration or Successor Status		9	L
1 V.	Declaration That Strike Unlawful	3	27	24
٧.	Declaration That Lock- Out Unlawful	. 1	1	5
VI.	CONSENT TO PROSECUTE	5	28	46
VII.	Complaint of Unfair Practice in Employment (Section 65)	9	65	91
VIII.	Miscellaneous	4	48	9
	TOTAL	106	725	658

TABLE IV

## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

### BY TYPE AND DISPOSITION

		F APPLICATI			OF EMPLOYEE	
	SEPTEMBER 1965	1st 6 Mths 1965-66		SEPTEMBER 1965	1st 6 Mths 1965-66	FISCAL YR. 1964-65
1. CERTIFICATION						
Granted Dismissed Withdrawn	59 12 8	377 94 46	313 75 36	1025 755 291	10193 3945 2899	10917 4249 1905
TOTAL	79	517	424	2071	17037	17071
II. TERMINATION OF BARGAINING RIGHTS						
Granted Dismissed Withdrawn	3 2	13 15 2	38 15 2	23 65 —	1057 367 73	370 279 82
TOTAL	5	30	55	88	1497	731

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY
AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE
BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR
CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR
APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			Number of Applications September 1st 6 Months Fiscal Year		
			1965	1965-66	1964-65
111.	DECLARATION THAT STRI	<u>KE</u>			
	Granted Dismissed Withdrawn			6 3 <u>18</u>	8 4 12
		TOTAL	3	27	24
1 V •	DECLARATION THAT LOCK UNLAWFUL	OUT			
	Granted Dismissed Withdrawn		1 	<u></u>	1 1 3
		TOTAL	1	1	
٧٠	CONSENT TO PROSECUTE				
	GRANTED DISMISSED WITHDRAWN		1 1 3	5 4 <u>19</u>	7 10 29
		TOTAL	5	28	46

TABLE V

### REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY

### THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes			
	SEPTEMBER	1st 6 Months 1965-66		
CERTIFICATION AFTER VOTE*				
PRE-HEARING VOTE	2	11	13	
POST-HEARING VOTE	2	16	14	
BALLOTS NOT COUNTED	-	~	-	
DISMISSED AFTER VOTE				
Pre-Hearing Vote	_	3	4	
POST-HEARING VOTE	4	19	30	
BALLOTS NOT COUNTED		2	ton.	
TOTAL	8	51	61	

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

### TABLE IV

# REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE

### ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1965	1965-66	FISCAL YEAR 1964-65
*Respondent Union S Respondent Union U	2	1 12	8
TOTAL	_2	<u>13</u>	8

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT

IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION

IS THUS THE RESPONDENT.



ONTARIO LABOUR RELATIONS BOARD



# CASE LISTINGS OCTOBER 1965

PACE

			1 AGE
1.	(B) APPLICATIO	AGENTS CERTIFIED  DNS DISMISSED  DNS WITHDRAWN	449 465 470
2.	Applications for Bargaining Right	Declaration Terminating	470
3.	Applications for Strike Unlawful	Declaration that	474
4.	APPLICATIONS FOR	CONSENT TO PROSECUTE	474
5.	COMPLAINTS UNDER LABOUR PRACTICE	SECTION 65 (UNFAIR	476
6.	Application for (Section 79(2)	DETERMINATION UNDER	490
7.	REFERENCE TO THE SECTION 79A	Board Pursuant to	490
8.	Application for I Board's Decision	RECONSIDERATION OF N	490
9.	INDEXED ENDORSEM	ENTS	
	CERTIFICATION 10731-65-R	ABITIBI POWER & PAPER COMPANY, LIMITED	491
	TERMINATION 10562-65-R	BARRON DIAMOND DRILLING LIMITED	493
	Section 79a 10836-65-M	JAMES SMART MFG. CO. Limited	496
ADDENDA	63_R ATLAS STEEL	s Company, Limited	497
10651-	65-R UNITED DAIR	Y AND POULTRY CO-	499
	OPERATIVE	LIMITED	7//

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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

## DURING OCTOBER 1965

### BARGAINING AGENTS CERTIFIED DURING OCTOBER

No VOTE CONDUCTED

9223-64-R: International Union of Operating Engineers, Local 796 (Applicant) v. Toronto Hydro-Electric System (Respondent).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY EMPLOYED AS THEIR HELPERS, ENGAGED IN THE GENERATION OF STEAM AT THE RESPONDENT'S DISTRICT STEAM PLANT (THE SIMCOE STREET PLANT) AND AT ITS TERAULEY PLANT, IN TORONTO, SAVE AND EXCEPT CHIEF ENGINEERS AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (10 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT THE PHRASE "PERSONS PRIMARILY EMPLOYED AS THEIR HELPERS" IN THE FOREGOING DESCRIPTION OF THE BARGAINING UNIT COMPRISES PERSONS WHOSE DUTIES ARE OF SUCH A NATURE ... THAT THE WORK THEY PERFORM IS TREATED AS QUALIFYING EXPERIENCE UNDER THE REGULATIONS MADE UNDER THE OPERATING ENGINEERS ACT.

10648-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 1036 (Applicant) v. Judy Hoydalo, carrying on business under the Firm name and style of Lakeshore Paving Company (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT SAINTE MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE EVIDENCE BEFORE US AND AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES THEREON THE BOARD FINDS:

(1) THAT F. S. SHELLEBY DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT. IN REACHING THIS CONCLUSION WE HAVE TAKEN INTO CONSIDERATION NOT ONLY THE FACT THAT IT IS THE USUAL PRACTICE OF THE BOARD TO INCLUDE WORKING FOREMEN IN CONSTRUCTION BARGAINING UNITS BUT ALSO THE FACT THAT IN OUR VIEW SHELLEBY DOES NOT HAVE ANY REAL MANAGERIAL AUTHORITY APART FROM THAT OF SUPERVISING THE WORK FORCE WHILE WORKING ALONG WITH THEM. THERE IS IN OUR VIEW NO CLEAR CUT EVIDENCE THAT SHELLEBY HAS ANY PEAL AUTHORITY TO HIRE AND FIRE. THUS ON THE QUESTION OF HIRING SHELLEBY QUALIFIES HIS EARLIER EVIDENCE BY ADMITTING THAT IN EACH CASE

HE HAD CONSULTED THE SUPERINTENDENT. HE DOES NOT EVEN DECIDE ON THE WORK FORCE. THERE IS NO EVIDENCE THAT HE POSSESSES ANY REAL AUTHORITY TO FIRE. THIS CASE IS A FAR CRY FROM THE DUTIES AND POWERS DISCUSSED FOR EXAMPLE IN THE PRE-CON MURRAY LIMITED CASE, BOARD FILE NO. 10331-65-R. IN OUR VIEW SHELLEBY POSSESSES NO GREATER AUTHORITY THAN THE TYPE OF PERSON THE BOARD NORMALLY INCLUDES AS A WORKING FOREMAN. SHELLEBY IS THUS INCLUDED IN THE BARGAINING UNIT.

- (II) THAT WALTER KOSTENUIK SPENDS THE MAJORITY OF HIS TIME AS A LABOURER AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT BUT THAT IN CONTRAST THERETO R. J. ROACH, WAS HIRED AS A TRUCK DRIVER AND WHILE IN THE EMPLOY OF THE RESPONDENT SPENT THE MAJORITY OF HIS TIME WORKING AS A TRUCK DRIVER AND IS THEREFORE NOT INCLUDED IN THE BARGAINING UNIT.
- (III) THAT HAVING REGARD TO THE FACT THAT THE RESPONDENT'S RECORDS DO NOT SHOW LAURENT LE CLAIR AS WORKING ON JULY 14, THE DATE OF THE MAKING OF THE APPLICATION, AND FURTHER TO LE CLAIR'S UNCERTAINTY AS TO WHETHER HE WORKED ON JULY 14, LE CLAIR IS NOT INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT.
  - (IV) THAT LESLIE BROCK AND GORDON MORIN ARE EXCLUDED FROM THE BARGAINING UNIT. THE ONLY REAL EVIDENCE RESPECTING THE STATUS OF THESE TWO PERSONS IS FOUND IN THE TESTIMONY OF THE WITNESS ROACH AND OUR CONCLUSION IS BASED PRIMARILY ON THIS EVIDENCE. IT WAS OPEN TO THE RESPONDENT TO BRING FURTHER EVIDENCE AFTER ROACH HAD TESTIFIED AND IT CHOSE NOT TO DO SO.

In the result therefore on the date of the making of the APPLICATION THE BOARD FINDS THAT THERE WERE TEN PERSONS IN THE BARGAINING UNIT.

IT THUS BECOMES NECESSARY TO CONSIDER WHAT EFFECT IF ANY THE EMPLOYEES' STATEMENT OF DESIRE FILED WITH THE BOARD HAS ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT. HAVING REGARD TO THE FACT THAT THE HEADING ON THE DOCUMENT WAS NOT THERE AT THE TIME THE EMPLOYEES SIGNED THE DOCUMENT WE ARE UNABLE IN THE CIRCUMSTANCES OF THIS CASE TO FIND THAT THE DOCUMENT IN QUESTION CASTS DOUBT ON THE WEIGHT TO BE ATTACHED TO THE MEMBER—SHIP EVIDENCE."

10710-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT V. UNITED DAIRY AND POULTRY CO-OPERATIVE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, COMMISSION MILK HAULERS,

COMMISSION CREAM HAULERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ALL PERSONS CLASSIFIED AS WORKING IN QUALITY CONTROL ARE INCLUDED IN THE BARGAINING

10730-65-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. LORD & BURNHAM CO. LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN EMPLOYED BY THE RESPONDENT IN ITS ENGINEERING DEPARTMENT AT ST. CATHARINES, SAVE AND EXCEPT CHIEF DRAFTSMEN, PERSONS ABOVE THE RANK OF CHIEF DRAFTSMAN, STUDENTS EMPLOYED UNDER THE WATERLOO UNIVERSITY TRAINING PROGRAM AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE ENGINEERING DEPARTMENT OF THE RESPONDENT IS COMPOSED OF THE MECHANICAL AND STRUCTURAL SECTIONS.

10731-65-R: IROQUOIS FALLS AND CALVERT DISTRICT PUBLIC SERVICE EMPLOYEES

(APPLICANT) v. ABITIBI POWER & PAPER COMPANY, LIMITED (RESPONDENT) (16 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 491 ).

10830-65-R: Local Union Number 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Lakeshore Food Products Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

10832-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF SARNIA (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MAINTENANCE DEPARTMENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLERK OF WORKS IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

10834-65-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION LOCAL 197 (APPLICANT) v. HANRAHAN'S TAVERN (RESPONDENT).

UNIT: "ALL WAITERS, TAPMEN AND BARTENDERS EMPLOYED BY THE RESPONDENT AT ITS HANRAHAN'S TAVERN AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

10843-65-R: United Steelworkers of America (Applicant) v. Sherman Mine, Cliff's Of Canada, Ltd., Manager (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA, SAVE AND EXCEPT FOREMEN, SHIFT BOSSES, PERSONS ABOVE THE RANK OF FOREMAN AND SHIFT BOSS, OFFICE AND CLERICAL STAFF, EMPLOYEES IN THE LABORATORY AND IN THE ENGINEERING, GEOLOGICAL AND METALLURGICAL DEPARTMENTS, SECURITY GUARDS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

10845-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TRIPLE-A MANUFACTURI COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPFOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENT EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10850-65-R: International Molders and Allied Workers Union AFL.CIO.CLC (Applic v. The C. Beck Company, Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPTOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF."
(18 EMPLOYEES IN THE UNIT).

10851-65-R: Warehousemen and Miscellaneous Drivers Union, Local 419, affiliate with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen an Helpers of America (Applicant) v. Canadian Patent Scaffolding Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPFOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF."

(9 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, FOR THE PURPOSES OF CLARITY THE BOARD DETERMINES THAT AN EMPLOYEE OF THE RESPONDENT CLASSIFIED AS "WAREHOUSEMAN AND SCAFFOLD ERECTOR" IS AN EMPLOYEE OF THE RESPONDENT INCLUDE IN THE BARGAINING UNIT.

10853-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. E. W. Bliss Company of Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

10854-65-R: BAKERY & CONFECTIONERY WORKERS! INTERNATIONAL UNION OF AMERICA (APPLICANT) v. Blue BIRD BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES SUPERVISORS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10855-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Cecutti's Bakery Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

10859-65-R: Hotel and Restaurant Employees Union, Local 743, Affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-C10, Canadian Labour Congress and Windsor and District Labour Council (Applicant) v. Helen Victoria Harrison (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE CAFETERIAS AT HIRAM WALKER & SONS LIMITED AT WALKERVILLE." (7 EMPLOYEES IN THE UNIT).

10860-65-R: Textile Workers Union of America, AFL, CIO, CLC (Applicant) v. KCL Packaging of Canada Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (38 EMPLOYEES IN THE UNIT).

10869-65-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. REYNOLDS BROS. LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."

(12 EMPLOYEES IN THE UNIT).

10870-65-R: POCKETBOOK WORKERS UNION, LOCAL (9) OF THE INTERNATIONAL LEATHER-GOODS, PLASTICS AND NOVELTY, WORKERS UNION (APPLICANT) v. COLUMBIA FINISHING MILLS, LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

10872-65-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (Applicant) v. James Howden and Parsons of Canada Limited (Respondent).

UNIT: "ALL METHODS PLANNERS AND DRAFTSMEN EMPLOYED IN THE ENGINEERING DRAFTING OFFICE AND THE METHODS PLANNING SECTION OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF DRAFTSMEN, METHODS PLANNING SUPERVISOR, PERSONS ABOVE THE

RANK OF CHIEF DRAFTSMAN AND METHODS PLANNING SUPERVISOR, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10874-65-R: International Hod Carriers Building and Common Labourers Union, Local 493 (Applicant) v. Emery Engineering and Contracting Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWN OF PARRY SOUND AND IN McDougall Township in the District of Parry Sound, save and except non-working foremen and persons above the rank of non-working foremen (8 employees in the unit).

AFTER DUE CONSIDERATION THE BOARD IS NOT PERSUADED THAT THE DISTRICT OF PARRY SOUND CONSTITUTES AN APPROPRIATE GEOGRAPHIC AREA. IN THESE CIRCUMSTANCES, AND AS A PURELY INTERIM MEASURE ONLY, THE BOARD FOUND THE UNIT DESCRIBED ABOVE TO BE APPROPRIATE.

10876-65-R: Brotherhood of Painters, Decorators, Paperhangers of America Local Union 1891 (Applicant) v. M. Fridmann Painting Co. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

THE APPLICANT IS SEEKING AN ALL EMPLOYEE UNIT RATHER THAN ITS USUAL CRAFT UNIT. WHERE THE BOARD GRANTS AN INDUSTRIAL UNIT ITS POLICY IS TO EXCLUDE FOREMEN AND NOT TO USE THE TERM "NON-WORKING FOREMEN".

10878-65-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION # 233 (APPLICANT) v. BARBER COLMAN OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10882-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Starnino Cesaroni Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST,

NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS SHOP AND YARD EMPLOYEES AND SECURITY GUARDS." (11 EMPLOYEES IN THE UNIT).

10883-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Bundy Tubing Company of Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS NATIONAL TUBULAR PRODUCTS DIVISION AT KITCHENER, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT AND REPRESENTATIONS OF THE PARTIES).

10887-65-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. DOMINION RUBBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT LINDSAY, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, LABORATORY STAFF AND OFFICE AND SALES STAFF." (92 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10888-65-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Gerard Builders of North Bay Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"In the Geo. E. Knowles Limited case, Board File Number 10657-65-R The Board noted that it was not favourably disposed to the area proposed by the applicant in that case, [namely, District of Algoma and Cochrane, north of the 49th parallel and west of the North Driftwood, Abitibi and Moose Rivers to James Bay including the rivers herein named.] The same area is proposed in the present case and the Board has not changed its mind in this respect. However, having regard to our experience to date, we are currently considering the formation of new geographic areas in northern Ontario."

10889-65-R: United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Farquhar Construction Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF COCHRANE NORTH OF THE 50TH PARALLEL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(5 EMPLOYEES IN THE UNIT).

10890-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 721 (APPLICANT) v. STEPHENS-ADAMSON MFG. CO. OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10891-65-R: HOTEL & RESTAURANT EMPLOYEES' & BARTENDERS' INTERNATIONAL UNION, LOCAL 197 (APPLICANT) v. WELLINGTON HOTEL (RESPONDENT).

UNIT: "ALL WAITERS AND BARTENDERS EMPLOYED BY THE RESPONDENT AT ITS WELLINGTON HOTEL AT GUELPH, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

10892-65-R: CANADIAN CONSTRUCTION WORKERS' UNION DIVISION NO. 1, N.C.C.L. (APPLICANT) v. THOMAS FULLER CONSTRUCTION CO., (1958) LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENE v. LOCAL No. 7, OTTAWA, ONTARIO, BRICKLAYERS, MASONS AND PLASTERERS I.U. OF A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, BRICKLAYERS, STONEMASONS AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL No. 93, SIGNED ON THE 13TH DAY OF AUGUST, 1965." (58 EMPLOYEES IN THE UNIT).

10894-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robertson-Yates Corporation Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

10895-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Halls Associates Company Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDEN IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10898-65-R: International Hod Carriers Building and Common Labourers Union, Local 247 (Applicant) v. Robertson-Yates Corporation Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10899-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. H. J. McFarland Construction Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE THE BOARD NOTED THAT OPERATORS OF CONCRETE MIXERS, SPREADERS, FINISHERS AND SIMILAR EQUIPMENT ARE INCLUDED IN THE BARGAINING UNIT.

10902-65-R: Sheet Metal Workers! International Association Local Union #233 (Applicant) v. Ceilcote Canada Ltd. (Respondent).

<u>Unit</u>: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

10903-65-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 721 (Applicant) v. Sarnia Boists Limited (Respondent).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

After carefully considering the representations of the parties as to the description of the bargaining unit, the Board decided not to depart from its standard unit granted in cases of this kind. The Board, therefore, found the above unit to be appropriate.

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT "RIGGERS" ARE INCLUDED IN THE TERM "IRON WORKERS" BUT THAT "HOIST OPERATORS" ARE NOT SO INCLUDED.

10907-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. THE BECKER MILK COMPANY LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS REGULARLY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT AT 671 WARDEN AVENUE, SCARBOROUGH, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

10908-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. CANADIAN STEREOTYPE PROCESS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 191 LOUIS STREET, SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10909-65-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938 General Truck Drivers Union (Applicant) v. The Ralph M. Parsons Construction Company of Canada, Limited (Respondent).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

The Board noted that the applicant and the respondent have proposed the inclusion of warehousemen and truck mechanics. There appears, however, to be a question as to whether warehousemen are appropriate for inclusion in the unit and a further question as to whether the sole mechanic on the job is primarily engaged in servicing trucks and/or other equipment. In these circumstances and to avoid delay the Board does not propose to include warehousemen and mechanics at this time. However, if the parties are unable to reach agreement in this matter, it is open to either of them under the provisions of section 79(1) of the Labour Relations act to request the Board to reconsider and vary or revoke its decision.

10910-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) v. ROSSI'S BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, FORELADIES, SALES SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, FORELADY AND SALES SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10912-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, Local Union No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DOMINION DAIRIES LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE CITY OF PETERBOROUGH, SAVE AND EXCEPT ROUTE FOREMEN, FOREMEN, PERSONS ABOVE THE RANK OF ROUTE FOREMAN AND FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ACCORDING TO THE STATEMENTS MADE BY THE RESPONDENT IN ITS REPLY. THAT COMPANY. DOMINION DAIRIES LIMITED, ACQUIRED THE BUSINESS AND TRUCKS OF SUNSHINE DAIRY LIMITED SOME TIME PRIOR TO THE FILING OF THIS APPLICATION, WHICH WAS MADE ON OCTOBER 4TH, 1965. APPARENTLY, THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440 WAS, IN OCTOBER 1956, CERTIFIED AS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF SUNSHINE DAIRY LIMITED. CONSISTING OF ALL EMPLOYEES OF THE COMPANY, SAVE AND EXCEPT ROUTE FOREMEN, FOREMEN, AND OFFICE STAFF. ACCORDING TO THE STATEMENTS MADE IN THE RESPONDENT'S REPLY, A COLLECTIVE AGREEMENT, DATED APRIL 1ST, 1957, WAS THEREAFTER ENTERED INTO BETWEEN SUNSHINE DAIRY LIMITED AND RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION. LOCAL 440. COVERING THE UNIT OF EMPLOYEES FOR WHICH THIS LOCAL HAD BEEN CERTIFIED AS BARGAINING AGENT. A COPY OF THIS AGREEMENT WAS FILED WITH THE RESPONDENT'S REPLY. IT IS PROVIDED IN ARTICLE 13 THEREOF, THAT THE AGREEMENT SHALL CONTINUE IN EFFECT FROM APRIL 1ST, 1957, UNTIL THE 31ST. MARCH, 1958, AND "UNLESS EITHER PARTY GIVES NOTICE IN WRITING TO THE OTHER PARTY THAT AMENDMENTS ARE REQUIRED, OR THAT THE PARTY INTENDS TERMINATING THE AGREEMENT, THEN IT SHALL CONTINUE IN EFFECT UNTIL THE 31ST DAY OF MARCH, 1959, AND SO ON FROM YEAR TO YEAR THEREAFTER . THE AGREEMENT ALSO CONTAINS A CLAUSE PROVIDING FOR THE MONTHLY DEDUCTION OF UNION DUES FOR ALL EMPLOYEES IN THE UNIT. THE RESPONDENT FURTHER STATES IN ITS REPLY THAT THE PAYROLL RECORDS OF SUNSHINE DAIRY LIMITED, WHICH WERE MADE AVAILABLE TO IT. INDICATE THAT NO DEDUCTIONS FOR UNION DUES WERE MADE AFTER MARCH 1958. APPARENTLY, SO FAR AS THE RESPONDENT IS AWARE, NO ACTION HAS BEEN TAKEN BY THE RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, LOCAL 440 REFERABLE TO THE ASSERTION OF ITS BARGAINING RIGHTS OR WITH RESPECT TO ANY collective agreements or continuances thereof, since 1958.

WHILE THE RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, LOCAL 440 WAS GIVEN NOTICE OF THE HEARING HEREIN AND, THEREFORE, AFFORDED THE OPPORTUNITY TO MAKE ANY CLAIM WHICH IT MAY HAVE HAD TO BARGAINING RIGHTS IN RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION IT DID NOT APPEAR AT THE HEARING.

IN ALL THE CIRCUMSTANCES, WE ARE CONSTRAINED TO FIND THAT RETAIL WHOLESALE, AND DEPARTMENT STORE UNION, LOCAL 440 HAS ABANDONED ANY CLAIM, WHICH IT MIGHT HAVE HAD, TO BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION."

10914-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. SMITH & ELSTON COMPANY LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN (5 EMPLOYEES IN THE UNIT).

THE AREA REQUESTED BY THE APPLICANT DIFFERED FROM THAT USUALLY GRANTED IN CASES OF THIS KIND. THE BOARD SAW NO REASON FOR DEPARTING FROM ITS USUAL PRACTICE IN THIS CASE.

10915-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Dashwood Planing Mills Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT CENTRALIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

10919-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Twin-Cee Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GEORGETOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"GRACE CALDER, GAVE EVIDENCE IN SUPPORT OF A DOCUMENT (HEREINAFTER REFERRED TO AS THE PETITION) SUBMITTED AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THIS APPLICATION. HER EVIDENCE IS THAT TWO HOUR LONG MEETINGS OF ALL THE EMPLOYEES WERE HELD ON THE PREMISES OF THE RESPONDENT DURING WORKING HOURS WITH THE PERMISSION OF MANAGEMENT FOR THE PURPOSE OF PREPARING AND SECURING SIGNATURES THAT APPEAR ON THE PETITION. SHE TESTIFIED THAT DURING THE MEETINGS ALL PRODUCTION OPERATIONS OF THE RESPONDENT CLOSED DOWN. WHILE THE EVIDENCE IS THAT NO MEMBERS OF MANAGEMENT WERE PRESENT AT THE MEETINGS WE ARE SATIS-FIED THAT THE MANAGEMENT WAS AWARE OF THE MEETINGS AND THEIR PURPOSE. IN ALL THESE CIRCUMSTANCES, WE FIND THAT THE RESPONDENT AT LEAST GAVE TACIT SUPPORT TO THE PETITION AND THIS SUPPORT MUST HAVE BEEN EVIDENT TO ALL OF THE EMPLOYEES. THE BOARD ACCORDINGLY IS NOT PREPARED TO HOLD THAT THE PETITION REPRESENTS A TRUE EX-PRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT (SEE PIGOTT MOTORS (1961) LIMITED CASE, 62 C.L.L.C. 916,264, C.L.S. 76-530). THE BOARD THEREFORE FINDS THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

10921-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. MEL-RON CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(4 EMPLOYEES IN THE UNIT).

10922-65-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, LOCAL 604 (APPLICANT) v. EMPRESS HOTEL LIMITED (RESPONDENT).

Unit: "ALL waiters, bartenders and tapmen employed by the respondent at its Empress Hotel at Peterborough, save and except department managers, persons above the rank of department manager and persons regularly employed for not more than 24 hours per week." (17 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10925-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. CLIFF MILLS MOTORS LIMITED (RESPONDENT).

Unit: "all employees of the respondent at Oshawa, save and except foremen, persons above the rank of foreman, control tower operators, service station managers and office and sales staff." (63 employees in the unit).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10926-65-R: Textile Workers Union of America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Canada Catering Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE PREMISES OF COURTAULDS (CANADA) LTD., AT CORNWALL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR." (15 EMPLOYEES IN THE UNIT).

10933-65-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. CRAWFORD-ONTARIO SAND & GRAVEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF MAPLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (57 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

10936-65-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 330 (Applicant) v. Centri-Spray (Canada) Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (75 EMPLOYEES IN THE UNIT).

10943-65-R: Local Union #1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. The Carter Construction Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF THE TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF THE WATERLOO-WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10944-65-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. ROSS MITCHELL HEATING & AIR CONDITIONING (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

10947-65-R: Local Union 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Strathcona House (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10950-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Len Ariss & Co Ltd (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

10951-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ron Engineering & Construction Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

10952-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. M. Sullivan and Sons (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

10953-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Don Keller Construction (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

10956-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 759 (APPLICANT) v. SILLMAN COMPANY (RESPONDENT).

Unit: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

10973-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 493 (APPLICANT) v. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWN-SHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

THE AREA PROPOSED BY THE APPLICANT IS NOT ONE WHICH THE BOARD IS PREPARED TO GRANT AT THIS TIME. AS AN INTERIM MEASURE THE BOARD, THEREFORE, FOUND THE ABOVE UNIT TO BE APPROPRIATE.

10978-65-R: International Association of Bridge Structural and Ornamental Ironworkers, Local 721 (Applicant) v. Torin Construction Company Ltd. (Respondent).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

#### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10721-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. COLUMBIAN CARBON (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS' LIST			11
NUMBER OF BALLOTS CAST		11	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	9		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT	2		

10801-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union 837 (Applicant) v. Eaglewood Construction Company Limited (Respondent) v. Christian Trade Unions of Canada (Intervener).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS PROPOSED AN AREA "WITHIN A RADIUS OF FIFTEEN MILES FROM THE HAMILTON CITY LIMITS". THE RESPONDENT DID NOT REPLY TO THE APPLICATION. THE AREA PROPOSED BY THE APPLICANT WOULD CUT ACROSS OTHER AREAS GRANTED BY THE BOARD AND IN ANY EVENT THE BOARD IS OPPOSED IN PRINCIPLE TO ANY AREA DESCRIBED IN TERMS OF A RADIUS. IN RECENT CASES THE BOARD HAS BEEN GRANTING "IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON", AND WE SEE NO REASON TO DEPART FROM THAT DESCRIPTION IN THE PRESENT CASE."

NUMBER OF NAMES ON REVISED VOTERS LIST			11
NUMBER OF BALLOTS CAST		11	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN FAVOUR OF			
INTERNATIONAL HOD CARRIERS BUILDING			
AND COMMON LABOURERS! UNION OF AMERICA,			
LOCAL UNION 837	10		
NUMBER OF BALLOTS MARKED IN FAVOUR OF			
CHRISTIAN TRADE UNIONS OF CANADA	0		

10897-65-R: Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. Canadian Pyjama and Shirt Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (71 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST		68
NUMBER OF BALLOTS CAST		68
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	58	
NUMBER OF BALLOTS MARKED IN FAVOUR	7.0	
OF CAPASCO EMPLOYEES ASSOCIATION	10	

#### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10755-65-R: United Steelworkers of America (Applicant) v. Sherbrooke Metallurgical Company Limited (Respondent) v. Canadian Union of Operating Engineers and its Local 106 (Intervener).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN SHERBROOKE TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CHIEF CHEMIST, OFFICE STAFF AND STUDENTS HIRED FOR THE VACATION PERIOD." (54 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS? LIST	54
Number of ballots cast	54
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
United Steelworkers of America 32	
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
THE CANADIAN UNION OF OPERATING	
Engineers and its Local No. 106 22	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

#### No Vote Conducted

10615-65-R: United Packinghouse Food & Allied Workers (Applicant) v. Campbell Soup Company Limited (Respondent). (592 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION AFTER A HEARING OF THE BOARD IN THIS MATTER. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

10676-65-R: SHEET METAL WORKERS! INTERNATIONAL ASSOCIATION, LOCAL UNION 504 (APPLICANT) v. KOSMACK & PRICE LIMITED (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS, SHEET METAL APPRENTICES AND THEIR HELPERS IN TRAINING IN THE EMPLOY OF THE RESPONDENT WORKING AT AND OUT OF KIRKLAND LAKE, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS COVERED BY A SUBSISTING CERTIFICATION OR COLLECTIVE AGREEMENT." (5 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE EVIDENCE PLACED BEFORE US, WE ARE NOT PERSUADED THAT A. LARONDE WORKS "AT AND OUT OF KIRKLAND LAKE" AS DISTINCT FROM BEING MERELY RESIDENT THEREIN. IN

CONSEQUENCE, WE ARE BOUND TO FIND THAT A. LARONDE IS NOT INCLUDED IN THE BARGAINING UNIT.

THE BOARD IS NOT SATISFIED ON THE BASIS OF ALL THE EVIDENCE THAT AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME OF THE APPLICATION, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

THIS APPLICATION IS DISMISSED."

10825-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #1450 (APPLICANT) v. MEL-RON CONSTRUCTION (RESPONDENT). (3 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSES THE APPLICATION."

10838-65-R: Local Union #1940, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Foster's Construction Limited (Respondent). (2 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"For the reasons given orally at the hearing held on October 29th, 1965 in this matter, the application is dismissed."

10846-65-R: ETOBICOKE WINE WORKERS UNION LOCAL NO. 1 (APPLICANT) v. THE PARKDALE WINES LIMITED (RESPONDENT). (17 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR THE REASONS GIVEN AT THE HEARING, THIS APPLICATION IS DISMISSED."

10920-65-R: United Packinghouse, Food and Allied Workers (Applicant) v. Norfolk Co-Operative Company Limited (Respondent). (67 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification wherein the parties have agreed that all employees of the respondent at Simcoe, Waterford, Jarvis and Courtland, save and except foremen, persons above the rank of foreman and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

THE PARTIES NOW HAVING AGREED THAT THIS MATTER FALLS WITHIN THE LEGISLATION JURISDICTION OF THE PARLIAMENT OF CANADA AND THAT THIS BOARD HAS NO JURISDICTION IN THE MATTER, THIS APPLICATION IS ACCORDINGLY FERMINATED."

10923-65-R: CANADIAN UNION OF UPERATING ENGINEERS (APPLICANT) V. CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS! UNION, LOCAL 220, B.S.E.I.U. (INTERVENER). (1 EMPLOYEE).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant has applied to be certified as bargaining agent for "all stationary engineers, apprentices, firemen, helpers, maintenance employees and cleaners, save and except the chief engineer employed by the respondent at London, Ontario, working under the direction of the chief engineer."

THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE
CURRENTLY BARGAINED FOR BY THE INTERVENER AS PART OF AN OVER-ALL
INDUSTRIAL UNIT.

THE APPLICANT AGREED THAT THE USUAL CRAFT BARGAINING UNIT FOR WHOM THE APPLICANT HAS BEEN CERTIFIED BY THIS BOARD WOULD BE DESCRIBED AS "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT THE CHIEF ENGINEER."

WHILE AGREEING THAT THE PROPOSED BARGAINING UNIT IN THIS MATTER IS A DEPARTURE FROM THE NORMAL CRAFT BARGAINING UNIT THE APPLICANT REQUESTED THE BOARD THAT IT BE CERTIFED AS BARGAINING AGENT FOR THE UNIT IT HAS PROPOSED IN THIS MATTER. THE EMPLOYEES WHO WOULD BE INCLUDED IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT ARE CLASSIFIED BY THE RESPONDENT AS "CLEANERS", "MAINTENANCE", "HELPERS", AND ONE PERSON CLASSIFIED AS A STATIONARY ENGINEER.

THE APPLICANT FURTHER AGREED THAT ONE OF THE EMPLOYEES DESCRIBED AS A HELPER DEVOTES APPROXIMATELY 25% OF HIS TIME AS A HELPER TO THE STATIONARY ENGINEER. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT SUCH A PERSON COULD NOT BE DESCRIBED AS A PERSON "PRIMARILY" ENGAGED AS A HELPER TO THE STATIONARY ENGINEER.

THE APPLICANT FURTHER AGREED THAT THERE ARE NO OTHER PERSONS WHO COULD BE CLASSIFIED AS BEING "PRIMARILY" ENGAGED AS HELPERS TO THE STATIONARY ENGINEER.

SECTION 6 (2) OF THE LABOUR RELATIONS ACT PROVIDES IN PART THAT "ANY GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNI N

THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT BE DEEMED BY THE BOARD TO BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING". IT APPEARS FROM THE EVIDENCE THAT WITH THE EXCEPTION OF THE ONE STATIONARY ENGINEER, THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED DO NOT "EXERCISE TECHNICAL SKILLS" AND ARE NOT "MEMBERS OF A CRAFT". IT FURTHER APPEARS THAT THESE EMPLOYEES ARE NOT COMMONLY ASSOCIATED WITH MEMBERS OF A CRAFT IN THE PERFORMANCE OF THE CRAFT'S TECHNICAL SKILLS.

IN ALL THE CIRCUMSTANCES OF THIS CASE, THE BOARD THEREFORE FINDS THAT THE UNIT PROPOSED BY THE APPLICANT IN THIS MATTER IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING IN THAT IT DOES NOT FALL WITHIN THE DESCRIPTION OF THE CRAFT UNIT WHICH THE APPLICANT COMMONLY REPRESENTS.

THE BOARD THEREFORE FINDS THAT THE ONLY UNIT WHICH THE APPLICANT COULD SEEK TO CARVE FROM THE INDUSTRIAL UNIT IN THIS MATTER WOULD BE A UNIT DESCRIBED AS "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT CHIEF ENGINEER."

Pursuant to the provisions of section 1 (1) (a) of The Labour Relations Act, "Bargaining unit" means "a unit of employees....". The Board therefore finds that an appropriate bargaining unit must be comprised of more than one employee. Since there was only one employee of the respondent who would be included in the description of a craft bargaining unit on the date the application was made, the Board accordingly finds in these circumstances that the craft description of the unit would not be a "bargaining unit" within the meaning of section 1(1) (a) of the Act and accordingly is inappropriate for collective bargaining.

THIS APPLICATION IS THEREFORE DISMISSED."

### DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

10837-65-R: CANADIAN RUBBER WORKERS' UNION, No. 156, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) v. FEDERAL MOGUL BOWER (CANADA) LIMITED, MECHANICAL RUBBER DIVISION (RESPONDENT) v. UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT MITCHELL, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (179 EMPLOYEES)

Number of spoiled ballots 1

Number of ballots marked in favour of applicant 69

Number of ballots marked in favour of intervener 95

#### DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10778-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NOTRE-DAME HOSPITAL (RESPONDENT) V. HAWKESBURY HOSPITAL EMPLOYEES UNION (C.N.T.U.) (INTERVENER).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN HAWKESBURY, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING." (40 EMPLOYEES IN THE UNIT).

For the purposes of clarity, the Board declared that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

For the purposes of clarity, the Board declared that the bargaining unit includes certified nursing assistants.

NUMBER OF NAMES ON VOTERS' LIST

NUMBER OF BALLOTS CAST

FAVOUR OF APPLICANT

FAVOUR OF INTERVENER

11

NUMBER OF BALLOTS MARKED IN

FAVOUR OF INTERVENER

30

10816-65-R: International Molders and Allied Workers Union, AFL.C10.CLC (Applicant) v. Grenville Castings Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MERRICKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST			33
NUMBER OF BALLOTS CAST		33	
NUMBER OF BALLOTS SEGREGATED AND			
NOT COUNTED	1		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	9		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT .	23		

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

10842-65-R: THE HOTEL AND RESTAURANT EMPLOYEE'S & BARTENDERS INTERNATIONAL UNION LOCAL 412 (Applicant) v. Algonquin Hotel (Soo) Limited (Respondent). (16 EMPLOYEES).

10862-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. ABSO PURE ICE (RESPONDENT). (4 EMPLOYEES).

10873-65-R: United Steelworkers of America (Applicant) v. Basic Structure Steel Fabricators Ltd. (Respondent). (21 employees).

10893-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. HIGGS HIGHWAY FENCING LIMITED (RESPONDENT). (14 EMPLOYEES).

10904-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. The Ralph M. Parsons Construction Co. of Canada Ltd. (Respondent) (57 employees).

10935-65-R: Sheet Metal Workers' International Association, Local Union 330 (Applicant) v. Centri-Spray Corporation of Canada Limited (Respondent). (72 EMPLOYEES).

10971-65-R: SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION 269, AFL-C10-CLC (APPLICANT) v. KINGSTON & SALMON, LIMITED, PLUMBING AND HEATING CONTRACTORS (RESPONDENT). (5 EMPLOYEES).

# APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING OCTOBER

10504-65-R: Lawrence Gilroy, John Hinch, William A. Martin, Brian Coffey and Gerald Maurice (Applicants) v. Kingston Typographical Union, Local 204 (Respondent). (GRANTED). (9 employees).

(RE: HANSON AND EDGAR LIMITED, KINGSTON, ONTARIO).

NUMBER OF NAMES ON REVISED VOTERS! L	IST		8
NUMBER OF BALLOTS CAST		9	
NUMBER OF BALLOTS SEGREGATED			
(NOT COUNTED)	1		
NUMBER OF BALLOTS MARKED IN			
FAVOUR OF RESPONDENT	3		
NUMBER OF BALLOTS MARKED			
AGAINST RESPONDENT	5		

10562-65-R: ROLAND BIGRAS (APPLICANT) V. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (RESPONDENT) V. BARRON DIAMOND DRILLING LIMITED (INTERVENER). (GRANTED). (43 EMPLOYEES).

Number of names on revised voters, List Number of Ballots Cast NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT
6
NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT
21

(SEE INDEXED ENDORSEMENT PAGE 493 ).

10645-65-R: WALLACE BONNIS AND DRIVER EMPLOYEES OF CEDARHURST PAVING CO. LIMITED (Applicant) v. Teamsters Local Union No. 230 Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen & Helpers. I.B. of T. & H. of A. (Respondent) v. Cedarhurst Paving Co. Limited (Intervener). (26 Employees).

(Re: CEDARHURST PAVING CO. LIMITED, THORNHILL, ONTARIO).

For reasons given in writing in the K.J. Beamish Construction Co. Limited case, Board file 10646-65-R, the Board found that this application was untimely and must be dismissed.

For reasons given in writing in the K.J. Beamish Construction Co. Limited case, Board file 10646-65-R, Board Member H.F. Irwin, dissenting would have found this application timely and would have re-listed the case for hearing for the purpose of enquiring into the evidence filed by the applicants as required under section 43(3) of the Act.

10646-65-R: RAE GOARD AND DRIVER EMPLOYEES OF K. J. BEAMISH CONSTRUCTION CO. LIMITED (APPLICANT) v. TEAMSTERS LOCAL UNION No. 230, READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS, I.B. OF T.C.W. & H. OF A. (RESPONDENT) v. K.J. BEAMISH CONSTRUCTION CO. LIMITED (INTERVENER). (18 EMPLOYEES).

(Re: K. J. BEAMISH CONSTRUCTION CO. LIMITED, THORNHILL, ONTARIO).

FOR REASONS GIVEN IN WRITING THE BOARD FOUND THAT THIS APPLICATION WAS UNTIMELY AND MUST BE DISMISSED.

For reasons given in writing Board Member H.F. Irwin dissenting, found this application timely and would have re-listed the case for hearing for the purpose of enquiring into the evidence filed by the applicants as required under section 43(3) of the Act.

10784-65-R: Mrs. M. BINCE AND J. LARUSIC (APPLICANTS) V. LOCAL 414 OF THE RETAIL. WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (RESPONDENT) V. FIRECO SALES LIMITED (INTERVENER). (61 EMPLOYEES) (GRANTED).

Number of names on revised voters' list

Number of ballots cast

Number of ballots marked in favour

of respondent

Number of ballots marked against

respondent

54

10828-65-R: Mrs. M. BINCE Mr. J.J. LA RUSIC (APPLICANTS) V. LOCAL 414 OF THE RETAIL, WHOLESALE & DEPT. STORE UNION (RESPONDENT): (DISMISSED). (71 EMPLOYEES).

(RE: FIRECO SALES LTD.,
METROPOLITAN TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application pursuant to section 43 of The Labour Relations Act for a declaration that the respondent no Longer represents the employees of Fireco Sales Ltd. at Metropolitan Toronto for whom it has been the bargaining agent.

HAVING REGARD TO THE FACT THAT BY AN ENDORSEMENT DATED OCTOBER 15th, 1965 THE BOARD DECLARED THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF FIRECO SALES LIMITED AT METROPOLITAN TORONTO, THIS APPLICATION IS DISMISSED."

10884-65-R: James M. D. Watt (Applicant) v. United Auto Workers Local No. 641 (RESPONDENT) (DISMISSED). (36 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The practice of the Board with respect to the nature and quality of evidence required to substantiate an application under section 43 for termination of bargaining rights has been clearly enunciated in a number of previous cases before this Board. It will suffice, for present purposes, to refer to what the Board said in <a href="https://doi.org/10.1001/jhear.1

IN ASCERTAINING WHETHER AN APPLICANT FOR TERMINATION OF BARGAINING RIGHTS HAS SATISFIED THE REQUIREMENTS OF SECTION 43(2) AND (3) OF THE LABOUR RELATIONS ACT. THE BOARD'S PRACTICE REQUIRES AND IT NOTIFIES THE APPLICANT IN ADVANCE OF THE HEARING, AS IT DID IN THIS CASE, THAT ANY REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED. AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES TO THE DOCUMENTS FILED IN SUPPORT OF THE APPLICATION WAS OBTAINED. WHAT THE BOARD IS SEEKING, AMONG OTHER THINGS, IS SATISFACTORY AND REASONABLE ASSURANCE FROM PERSONS WITH FIRST-HAND KNOWLEDGE THAT THE APPLICATION HAS NOT BEEN SPONSORED OR INITIATED BY MANAGEMENT. AND THAT THE DESIRES OF THE EMPLOYEES AS REFLECTED IN THE WRITTEN DOCUMENT WERE VOLUNTARILY RECORDED AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY. (SEE THE REMINGTON RAND LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER, 1955-59 TRANSFER BINDER.

#16,055, C.L.S. 76-530; THE HARRY HAYLEY & SONS LIMITED CASE, IBID #16,106, C.L.S. 76-595; THE ISLAND LAKE LUMBER COMPANY LIMITED CASE, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, SEPTEMBER, 1960, p. 277, BOARD FILE NO. 18-616-59; THE WESMACK LUMBER COMPANY LIMITED CASE, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, SEPTEMBER 1960, p. 227, BOARD FILE NO. 18,818-59; THE PYROTENAX OF CANADA LTD. CASE, CCH CANADIAN LABOUR LAW REPORTER, VOL. 1, #16,170, C.L.S. 76-685; THE KILLARNEY HOTEL (WINDSOR) LIMITED CASE, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, JANUARY, 1962, p. 361, BOARD FILE NO. 479-60-R.).

IT IS PLAIN FROM THE EVIDENCE PRESENTED THAT THE PERSON WHO PERFORMED THE MAJOR ROLE IN THE PREPARATION AND ORIGINATION OF THE PETITIONS WAS, FOR SOME REASON, NOT CALLED TO GIVE EVIDENCE. FURTHER, NO ACCOUNT WAS GIVEN AS TO WHAT HAPPENED TO THE FIRST HAND-WRITTEN PETITION BETWEEN THE TIME WHEN IT WAS GIVEN TO THE OFFICE GIRL AND THE TIME WHEN IT WAS RETURNED BY HER WITH THE TYPEWRITTEN BLANK PETITIONS TO MR. WATT. THESE OMISSIONS IN THE EVIDENCE MUST INEVITABLY RAISE QUESTIONS WHICH DETRACT FROM THE WEIGHT TO BE GIVEN TO THE PETITIONS AS BEING ORIGINATED BY THE EMPLOYEES AND EXPRESSING THE VOLUNTARY WISHES OF THE SIGNATORIES.

IT IS ALSO A MATTER OF CONSIDERABLE CONSEQUENCE IN ASSESSING THE WEIGHT TO BE GIVEN TO THE EVIDENCE, THAT MANAGEMENT CONVENED A MEETING OF EMPLOYEES, INCLUDING THOSE WHO HAD PARTICIPATED IN THE ORIGINATION AND CIRCULATION OF THE PETITIONS AND HAD THESE EMPLOYEES SIGN A PREPARED DOCUMENT PURPORTING TO REPUDIATE ANY SUGGESTION THAT MANAGEMENT HAD BEEN INVOLVED IN THE PETITIONS. IT IS PROBABLY VERY DOUBTFUL WHETHER SUCH EMPLOYEES WOULD FEEL THAT THEY HAD ANY REAL CHOICE IN THE MATTER BUT TO SIGN THE PAPER PLACED BEFORE THEM BY THEIR EMPLOYER. OBVIOUSLY THESE FACTS INVITE THE INFERENCE THAT MANAGEMENT HAD A PURPOSE IN OBTAINING THE SIGNATURES OF THE EMPLOYEES IN QUESTION TO THE DOCUMENT AND THAT IT HAD SOME BASIS TO FEAR OR BELIEVE THAT THE ACTIONS OR CONDUCT OF ITS OFFICIALS IN SOME WAY COULD OR MIGHT BE INTERPRETED, WHETHER ERRONEOUSLY OR NOT, AS INVOLVING THE COMPANY IN THE ORIGINATION OR CIRCULATION OF THE PETITIONS. IT MIGHT WELL BE, FOR ALL WE KNOW, THAT ANY SUCH ACTION OR CONDUCT WHICH MANAGEMENT WAS CONCERNED WITH WAS SUCH AS TO LEAD EMPLOYEES TO BELIEVE THAT MANAGEMENT WAS BEHIND THE PETITIONS AND WOULD KNOW THE IDENTITY OF ALL THOSE WHO SIGNED IT. WHILE THESE ARE QUESTIONS IN THE NATURE OF SPECULATION, THEY DO DEMONSTRATE THE SERIOUS SHORTCOMINGS OF THE EVIDENCE RELATING TO THE ORIGINATION AND CIRCULATION OF THE PETITIONS.

IN OUR OPINION, THE OMISSIONS IN THE EVIDENCE RELATING TO THE CHAIN OF EVENTS LEADING TO AND SURROUNDING THE ORIGINATION AND CIRCULATION OF THE PETITIONS ARE, IN THE CIRCUMSTANCES, FATAL IMPEDIMENTS TO ANY FINDING ON OUR PART THAT THE EVIDENCE IN SUPPORT OF THE PETITIONS COMPLIES WITH THE BASIC AND WELL-ESTABLISHED REQUIREMENTS OF THE BOARD AS QUOTED ABOVE FROM THE REMINGTON RAND LIMITED CASE.

THE APPLICATION MUST BE DISMISSED."

10929-65-R: Grant Brown, on his own behalf and on behalf of certain employees of Harrison Hewitt Limited (Applicant) v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC (Respondent). (GRANTED). (5 employees).

(Re: Harrison Hewitt Limited, Peterborough, Ontario).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT AND THE RESPONDENT HAVING ADVISED THE BOARD BY A LETTER DATED OCTOBER 13TH, 1965, THAT IT NO LONGER CLAIMS TO REPRESENT ANY EMPLOYEES THAT MAY BE AFFECTED BY THIS APPLICATION, THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF HARRISON HEWITT LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

#### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING OCTOBER

 $\frac{10924-65-U}{(Respondents)}$ . The Algoma Steel Corporation, Limited (Applicant) v. I. Brenko, et al.

10927-65-U: GATES RUBBER OF CANADA LIMITED (APPLICANT) v. W. ANDREW ET AL (RESPONDENTS). (WITHDRAWN).

10962-65-U: Men's Clothing Manufacturers Association of Ontario, and Firth Bros. Limited (Applicants) v. Frank A. Aquino et al (Respondents). (WITHDRAWN).

10983-65-U: THE S. F. BOWSER COMPANY LIMITED (APPLICANT) V. JOHN ALLEN ET AL (RESPONDENTS). (WITHDRAWN).

### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

10707-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Ford Motor Company of Canada Limited (Respondent). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON THE BASIS OF THE EVIDENCE AND THE WRITTEN ARGUMENTS OF COUNSEL WE ARE OF THE OPINION THAT ARGUABLE QUESTIONS OF LAW ARISE IN THIS MATTER.

THE BOARD ACCORDINGLY CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE SAID RESPONDENT DID, AFTER NOTICE UNDER SECTION 11 OF THE LABOUR RELATIONS ACT AND WHEN NO COLLECTIVE AGREEMENT WAS IN OPERATION AND WITHOUT THE CONSENT OF THE APPLICANT, ALTER A TERM OR CONDITION OF EMPLOYMENT OR A RIGHT AND PRIVILEGE OF ITS EMPLOYEES WHO ARE EMPLOYED IN THE OFFICES OF THE RESPONDENT AT BRAMALEA IN THE TOWNSHIP OF CHINGUACOUSY IN THE COUNTY OF PEEL, WHO ARE INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28TH, 1965, IN THAT IT DEPRIVED THE SAID EMPLOYEES OF THEIR MEMBERSHIP IN THE RESPONDENT'S RETIREMENT PENSION PLAN No. 3 CONTRARY TO SECTION 59(1) OF THE ACT:
- (B) THAT THE RESPONDENT DID DISCRIMINATE AGAINST THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28, 1965, IN REGARD TO THEIR EMPLOYMENT OR TERMS OR CONDITIONS OF THEIR EMPLOYMENT BECAUSE THEY WERE MEMBERS OF A TRADE UNION OR BECAUSE THEY WERE EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT BY DEPRIVING THE SAID EMPLOYEES OF THEIR MEMBERSHIP IN THE RESPONDENT'S RETIREMENT PENSION PLAN NO. 3, CONTRARY TO SECTION 50(A) OF THE SAID ACT;
- (c) THAT THE RESPONDENT DID IMPOSE OR PROPOSE THE IMPOSITION OF CONDITIONS IN THE CONTRACT OF EMPLOYMENT OF THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28TH, 1965, BY PURPORTING TO DEPRIVE THE SAID EMPLOYEES OF THEIR MEMBERSHIP IN THE RESPONDENT'S RETIREMENT PENSION PLAN NO. 3, THEREBY SEEKING TO RESTRAIN THE EMPLOYEES FROM EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 50(B) OF THE SAID ACT;
- (D) THAT THE RESPONDENT DID BY THE IMPOSITION OF A PENALTY, NAMELY, THE PURPORTED WITHDRAWAL OF COVERAGE IN ITS RETIREMENT PENSION PLAN No. 3 FROM THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28TH, 1965, SEEK TO COMPEL THE SAID EMPLOYEES TO CEASE TO EXERCISE RIGHTS UNDER THE LABOUR PELATIONS ACT, CONTRARY TO SECTION 50(c) OF THE SAID ACT;

(E) THAT THE RESPONDENT DID INTERFERE WITH THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION BY DEPRIVING THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28TH, 1965, OF THEIR MEMBERSHIP IN THE RESPONDENT'S RETIREMENT PENSION PLAN No. 3, CONTRARY TO SECTION 48 OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE.

10738-65-U: ALDERLEA SERVICES LIMITED (APPLICANT) v. J. FELICKS ET AL (RESPONDENTS). (WITHDRAWN).

10740-65-U: CANADIAN GENERAL ELECTRIC COMPANY, LIMITED (APPLICANT) v. A. AIREY ET AL (RESPONDENTS). (WITHDRAWN).

10963-65-U: Men's Clothing Manufacturers Association of Ontario, and Firth Bros. Limited (Applicants) v. Frank A. Aquino et al (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING OCTOBER

10371-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. IRVING-CHARLES SUPERMARKETS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a complaint for relief under section 65 of The Labour Relations  $\mathsf{Act}_\bullet$ 

THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS ROGER MEUNIER AND DOLORES DORION WERE DISCHARGED BY THE RESPONDENT ON MAY 1ST, 1965 CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50, AND 59A OF THE LABOUR RELATIONS ACT. THE RESPONDENT DENIES THE COMPLAINT AND ALLEGES THAT THE TWO ABOVE NAMED PERSONS WERE LAID OFF WITH OTHER EMPLOYEES BY REASON OF THE DROP IN THE VOLUME OF BUSINESS AND A CORRESPONDING LACK OF EMPLOYMENT FOR THEM.

THE EVIDENCE IS THAT THE RESPONDENT COMPANY PURCHASED THE BUSINESS OF CENTRAL SUPERMARKETS LIMITED LOCATED AT 245 RIDEAU STREET IN OTTAWA ON AUGUST 1ST, 1964. AT THE TIME OF THE SALE CENTRAL SUPERMARKETS LAID OFF ALL OF ITS EMPLOYEES AND THE RESPONDENT HIRED NEW STAFF WHEN IT TOOK OVER THE OPERATION OF THE STORE. THE COMPLAINANT UNION WAS THE BARGAINING AGENT FOR THE EMPLOYEES OF CENTRAL SUPERMARKETS LIMITED. SUBSEQUENT TO THE SALE, THE COMPLAINANT UNION CLAIMED TO BE THE BARGAINING AGENT OF THE RESPONDENT PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. THERE APPEARS TO HAVE BEEN A DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT WITH RESPECT TO THE BARGAINING RIGHTS CLAIMED BY THE UNION. THE PARTIES, HOWEVER, EXECUTED MINUTES OF SETTLEMENT DATED SEPTEMBER 23RD, 1964 BY WHICH THE RESPONDENT ACKNOWLEDGED THAT THE UNION WAS THE COLLECTIVE BARGAINING AGENT FOR THE EMPLOYEES OF THE

RESPONDENT AT ITS STORE AT 245 RIDEAU STREET. THE RESPONDENT AGREED TO MEET WITH THE UNION FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT.

BY THE TERMS OF THE MINUTES OF SETTLEMENT THE RESPONDENT FURTHER AGREED TO HIRE ON A FULL TIME BASIS NOT LATER THAN August 12th, 1964 five persons who were previously employed ON A FULL TIME BASIS BY CENTRAL SUPERMARKETS LIMITED AND WHO HAD BEEN LAID OFF BY THAT COMPANY DUE TO THE SALE OF ITS BUSINESS TO THE RESPONDENT. IN ACCORDANCE WITH THIS AGREEMENT THE TWO AGGRIEVED PERSONS ROGER MEUNIER AND DOLORES DORION. WHO HAD BEEN EMPLOYED ON A FULL TIME BASIS BY CENTRAL SUPER-MARKETS LIMITED, WERE EMPLOYED BY THE RESPONDENT ON OR ABOUT OCTOBER 1ST, 1964. ROBERT LABELLE, LOUISE ROULEAU AND MARGARET RAYMOND ALL OF WHOM ALSO HAD BEEN EMPLOYED ON A FULL TIME BASIS BY CENTRAL SUPERMARKETS LIMITED AT 245 RIDEAU STREET WERE HIRED BY THE RESPONDENT AT APPROXIMATELY THE SAME TIME. THE FIVE ABOVE NAMED PERSONS ALL WERE MEMBERS OF THE COMPLAINANT UNION AND THIS FACT WAS KNOWN TO THE RESPONDENT AT THE TIME THAT THEY WERE HIRED.

THE EVIDENCE OF ROGER MEUNIER IS THAT SHORTLY AFTER HE WAS HIRED HE COMMENCED WORK ON THE NIGHT SHIFT. HE CONTINUED TO WORK ON THIS SHIFT UNTIL HE WAS LAID OFF BY CHARLES TAYLOR, THE PRESIDENT OF THE RESPONDENT COMPANY, ON MAY 1ST, 2965. THE JOB OF THE NIGHT SHIFT WAS TO STOCK THE SHELVES WITH MERCHANDISE FOR THE FOLLOWING DAY OF BUSINESS. THE OTHER REGULAR EMPLOYEES ON THE NIGHT SHIFT THROUGHOUT THE WINTER AND SPRING OF 1965 WERE JOHN MACINTYRE, THE NIGHT BOSS, RAY STRAND, WHO CHARLES TAYLOR TESTIFIED WAS MACINTYRE'S ASSISTANT, ROBERT LABELLE AND DON WILKES.

IT IS COMMON GROUND BETWEEN THE PARTIES THAT THE RESPONDENT CLOSED DOWN OPERATIONS AT 245 RIDEAU STREET FOR A PERIOD OF THREE WEEKS IN MARCH 1965 FOR THE PURPOSE OF MAKING ALTERATIONS TO THE STORE. THE RESPONDENT HAD A WELL PUBLICIZED REOPENING OF THE STORE ON MARCH 22ND, 1965. CHARLES TAYLOR TESTIFIED THAT A COUPLE OF ADDITIONAL EMPLOYEES WERE EMPLOYED ON THE NIGHT SHIFT AT THE TIME OF THE REOPENING OF THE STORE BECAUSE OF AN INCREASE IN THE VOLUME OF BUSINESS. HIS EVIDENCE IS THAT WITHIN A SHORT PERIOD FOLLOWING THE REOPENING, HOWEVER, THERE WAS A DECLINE IN BUSINESS AND THE RESPONDENT PROCEEDED TO LAY OFF THE EXTRA EMPLOYEES IT HAD TAKEN ON FOR THE OPENING INCLUDING THE ADDITIONAL STAFF ON THE NIGHT SHIFT. TAYLOR FURTHER TESTIFIED THAT BUSINESS CONTINUED TO BE SLACK AND IT BECAME EVIDENT THAT ONLY FOUR EMPLOYEES WERE REQUIRED ON THE NIGHT SHIFT. TAYLOR STATED THAT AFTER SEEKING THE ADVICE OF BOTH CHARTRAND, THE GROCERY MANAGER WHO DIRECTED THE NIGHT SHIFT, AND JOHN MACINTYRE HE (TAYLOR) TESTIFIED ON THE BASIS OF JOB PERFORMANCE THAT MEUNIER AND WILKES WERE THE LOGICAL EMPLOYEES TO BE LAID OFF. THEY WERE SO INFORMED BY TAYLOR ON MAY 1ST. 1965.

WHILE THERE IS NO DOUBT THAT THE RESPONDENT WAS AWAPE OF MEUNIER'S MEMBERSHIP IN THE COMPLAINANT UNION WE FIND NO EVIDENCE TO SUPPORT THE COMPLAINT WITH REGARD TO HIM. THERE IS NO EVIDENCE TO INDICATE THAT WILKES, WHO WAS LAID OFF AT THE SAME TIME AS MEUNIER, WAS A MEMBER OF THE COMPLAINANT UNION. FURTHER, NO ADDITIONAL EMPLOYEES HAVE BEEN HIRED ON THE NIGHT SHIFT SINCE MEUNIER'S LAY-OFF ON MAY 1ST, 1965. HAVING REGARD TO ALL THE EVIDENCE, THE COMPLAINANT HAS FAILED TO SATISFY US THAT MEUNIER WAS LAID OFF BECAUSE OF HIS MEMBERSHIP IN THE COMPLAINANT UNION IN CONTRAVENTION OF ANY OF THE SECTIONS OF THE LABOUR RELATIONS ACT CITED BY THE COMPLAINANT.

THE COMPLAINT AS IT RELATES TO ROGER MEUNIER ACCORDINGLY IS DISMISSED.

Dolores Dorion testified that she had been previously employed as a cashier at 245 Rideau Street when the store was owned and operated by Central Supermarkets Limited. The latter company terminated her employment at the time of the sale of the store to the respondent. She was hired by the respondent as a cashier on October 1st, 1964, pursuant to the Minutes of Settlement.

IT IS COMMON GROUND BETWEEN THE PARTIES THAT THERE WAS CITY WIDE BARGAINING FOR A NUMBER OF 1.G.A. STORES IN OTTAWA INCLUDING THOSE OPERATED BY THE RESPONDENT. DORION WAS A MEMBER OF THE COMPLAINANT UNION'S NEGOTIATING COMMITTEE REPRESENTING THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT AT THE RIDEAU STREET STORE. THE COMPLAINANT AND THE RESPONDENT CARRIED ON NEGOTIATIONS FOR A COLLECTIVE AGREEMENT COMMENCING IN OCTOBER OF 1964 AND COMPLETED THE CONCILIATION PROCEDURES AS REQUIRED BY THE LABOUR RELATIONS ACT. NO COLLECTIVE AGREEMENT WAS ENTERD INTO BY THE PARTIES, WHICH FACT WAS REPORTED IN THE REPORT OF THE MINISTER WHICH ISSUED ON MARCH 26TH. 1965.

THE COMPLAINANT CALLED A MEETING FOR THE EVENING OF APRIL 15TH, 1965 OF ALL I.G.A. EMPLOYEES IN THE STORES INCLUDED IN NEGOTIATIONS BETWEEN THE PARTIES. THE PURPOSE OF THE MEETING AS STATED IN THE NOTICE TO EMPLOYEES WAS TO REPORT ON NEGOTIATIONS AND TO TAKE A STRIKE VOTE IF NECESSARY. ON THE SAME DATE, APRIL 15TH, THE RESPONDENT CALLED A MEETING OF ITS EMPLOYEES AT THE RIDEAU STREET STORE JUST PRIOR TO THE CLOSING HOUR OF BUSINESS AT 6:00 P.M. CHARLES TAYLOR TESTIFIED THAT AT THAT MEETING HE DID NOTHING MORE THAN READ A STATEMENT WHICH WAS PREPARED BY HIS SOLICITOR. THIS STATEMENT WAS FILED AS AN EXHIBIT. BRIEFLY, THE STATEMENT REFERS TO THE NEGOTIATIONS FOR A COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPON-DENT AND STATES THAT THE RESPONDENT COULD NOT ACCEPT CERTAIN DEMANDS OF THE UNION. REFERENCE WAS ALSO MADE TO CERTAIN BENEFITS WHICH THE RESPONDENT PLANNED FOR THE EMPLOYEES. THE STATEMENT FURTHER READS THAT NO EMPLOYEE WOULD BE PENALIZED BECAUSE OF MEMBERSHIP IN THE UNION BUT IF THE EMPLOYEES WENT

ON STRIKE THE RESPONDENT COULD GIVE NO ASSURANCE AS TO WHEN THEY WOULD BE RECALLED TO WORK. THE EMPLOYEES WERE URGED TO CAREFULLY CONSIDER ANY ACTION THEY MIGHT TAKE. DORION'S EVIDENCE IS THAT TAYLOR TOLD THE EMPLOYEES HE WAS AWARE OF THE UNION MEETING THAT NIGHT. BOTH DORION AND LOUISE ROULEAU TESTIFIED THAT THEY GOT THE IMPRESSION FROM WHAT TAYLOR SAID THAT IT WOULD BE JUST AS WELL IF THE EMPLOYEES DID NOT ATTEND THE UNION MEETING THAT EVENING. THE EVIDENCE IS THAT DORION, MARGARET RAYMOND AND FOUR DEPARTMENT STORE MANAGERS WERE THE ONLY EMPLOYEES OF THE RIDEAU STREET STORE WHO ATTENDED THE MEETING. A STRIKE VOTE WAS TAKEN AT THE MEETING.

DURING THE PERIOD BETWEEN OCTOBER 1964 AND MAY 1ST. 1965 THERE WERE FIVE FULL TIME CASHIERS EMPLOYED BY THE RESPONDENT AT THE RIDEAU STREET STORE INCLUDING DORION. THE OTHER FULL TIME CASHIERS WERE LOUISE ROULEAU, MARGARET RAYMOND, PAULINE BOLAND AND VELMA BOYCE. THE EVIDENCE OF DORION IS THAT BOLAND AND BOYCE WERE HIRED BY THE RESPONDENT AT THE TIME THE RESPON-DENT TOOK OVER THE OPERATION OF THE STORE IN AUGUST 1964. ROULEAU AND RAYMOND ALONG WITH DORION WERE ALL HIRED EARLY IN OCTOBER PURSUANT TO THE MINUTES OF SETTLEMENT. THROUGHOUT THIS PERIOD THERE WERE ABOUT HALF A DOZEN PART TIME CASHIERS WHO LARGELY WORKED ON WEEKENDS AND SUBSTITUTED IN THE ABSENCE OF ANY OF THE FULL TIME CASHIERS. THE EVIDENCE IS THAT THE NUMBER OF PART TIME CASHIERS WAS INCREASED AT THE TIME OF THE REOPEN-ING OF THE STORE IN MARCH. CHARLES TAYLOR TESTIFIED THAT THE ADDITIONAL PART TIME CASHIERS WERE LAID OFF WITHIN A SHORT PERIOD FOLLOWING THE REOPENING DUE TO A DECREASE IN THE VOLUME OF BUSINESS. HIS EVIDENCE IS THAT BECAUSE OF A CONTUNUED DECLINE IN BUSINESS THE SERVICES ON ONE OF THE FULL TIME CASHIERS WAS NO LONGER NEEDED. TAYLOR THEREUPON CONSULTED JOHN KAY, THE SUPERVISOR OF THE CASHIERS, WHO ADVISED HIM THAT DORION WAS THE WEAKEST OF THE FULL TIME CASHIERS. KAY'S TESTIMONY CORROBORATES THE EVIDENCE OF TAYLOR. TAYLOR STATED THAT ON THE BASIS OF KAY'S ASSESSMENT OF THE CASHIERS HE LAID OFF DORION ON MAY 1ST. 1965.

Louise Rouleau testified that for at least a week following the lay-off of Dorion one of the part time cashiers Hillary Mitchell worked the same hours as the full time cashiers. Kay could not specifically recall the number of hours worked by Mitchell immediately subsequent to the lay-off of Dorion. Both Kay and Taylor testified, however, that from time to time part time employees worked full time hours depending on absences of other cashiers and fluctuations in business. Rouleau further testified that an additional full time cashier, Jackie Perrier, was hired in early July. Taylor admitted this fact but also testified that the employment of one of the other full time cashiers Margaret Raymond had been terminated for cause during the intervening period since May 1st. Taylor's evidence is that Perrier had been head cashier for five or six years at another store of the respondent. He stated that he transferred her to

THE RIDEAU STREET STORE BECAUSE OF HER PARTICULAR PROFICIENCY AS A CASHIER.

THE COMPLAINANT ARGUES THAT THE PURPOSE OF THE MEETING CALLED BY TAYLOR ON APRIL 15TH WAS TO INFLUENCE THE EMPLOYEES NOT TO ATTEND THE UNION MEETING THAT EVENING. WITH THE EXCEPTION OF THE FOUR DEPARTMENT MANAGERS WHO THE COMPLAINANT ALLEGES ATTENDED THE MEETING AS AGENTS FOR THE RESPONDENT, DORION AND MARGARET RAYMOND WERE THE ONLY EMPLOYEES AT THE RIDEAU STREET STORE WHO ATTENDED THE MEETING. THE COMPLAINANT ARGUES THAT BECAUSE OF DORION'S ATTENDANCE AT THE UNION MEETING AGAINST THE WISHES OF HER EMPLOYER THE RESPONDENT DISCHARGED HER AS AN EXAMPLE TO OTHER EMPLOYEES IN AN EFFORT TO WEAKEN THE POSITION OF THE UNION.

On the evidence, we do not find that Taylor attempted to influence the employees not to attend the union meeting on April 15th. Rather, the evidence indicates that Taylor was attempting to influence the conduct of the employees at the meeting. Also, we are not prepared on the evidence to find that the department managers who attended the meeting did so as agents for Taylor. Even assuming that Taylor knew which employees attended the meeting he would be aware that Raymond as well as Dorion were present. Raymond's employment, however, was only terminated at a later date for cause. We would mention that there is no complaint before the Board by the complainant that Raymond's subsequent discharge was related to union activity.

WHILE IT MAY BE THAT MITCHELL WORKED FULL TIME HOURS IN THE WEEK FOLLOWING THE LAY-OFF OF DORION WE DO NOT INTERPRET THIS TO MEAN THAT MITCHELL SUBSTITUTED FOR DORION BUT ONLY THAT SHE WORKED LONGER THAN HER ERGULAR PART TIME HOURS IN THAT WEEK. FURTHER, WE FIND IT SIGNIFICANT THAT THE RESPONDENT DID NOT HIRE ANY ADDITIONAL FULL TIME CASHIERS PRIOR TO THE STRIKE CALLED BY THE UNION ON JULY 26TH WITH THE EXCEPTION OF PERRIER WHO IT APPEARS WAS A REPLACEMENT FOR RAYMOND FOLLOWING HER DISCHARGE. HAVING IN MIND KAY'S EVIDENCE CONCERNING DORION'S COMPARATIVE ABILITIES AS A CASHIER AND TAYLOR'S EVIDENCE OF PERRIER'S QUALIFICATIONS AS A CASHIER, WE DO NOT DRAW THE INFERENCE FROM TAYLOR'S TRANSFER OF PERRIER TO THE RIDEAU STREET STORE IN JULY RATHER THAN RECALLING DORION THAT DORION'S LAY-OFF ON MAY 1ST WAS PROMPTED BY HER UNION ACTIVITIES. WE WOULD ADD THAT THE RESPONDENT WAS AWARE OF HER ACTIVE PARTICIPATION IN THE AFFAIRS OF THE UNION SINCE OCTOBER OF 1964. HAVING REGARD TO ALL THE EVIDENCE, THE COMPLAINANT HAS FAILED TO SATISFY US THAT DORION WAS LAID OFF FOR HER UNION ACTIVITIES AS AN EXAMPLE TO OTHER EMPLOYEES IN CONTRAVENTION OF THE LABOUR RELATIONS ACT.

The complaint as it relates to Dolores Dorion accordingly is  $\mathsf{DISMISSED}_{\bullet}$ "

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"While I concur in the decision of the majority with respect to Roger Meunier, I dissent with the finding of the majority with respect to Dolores Dorion. Having regard to the evidence of the conduct of both Charles and Irving Taylor, which clearly reveals their hostile attitude towards the complainant union, and the evidence relating of the employment of Hillary Mitchell and Jackie Perrier following the Lay-off of Dolores Dorion, I find that the respondent discharged Dorion on May 1st because of her active participation in the complainant union. Accordingly, I would have directed her reinstatement and appropriate compensation."

10790-65-U: United Steelworkers of America (Complainant) v. Moyer Sand (1965) Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS JAMES BELZNER, CLARENCE COLE, LESLIE BLACKMORE, FREDERICK BILLYARD AND JACK BROWN WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50(a) AND (b) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THAT THE RESPONDENT BE REQUIRED TO REINSTATE THE AGGRIEVED PERSONS WITH COMPENSATION FROM THEIR RESPECTIVE DUTIES OF DISMISSAL. (COUNSEL FOR THE COMPLAINANT WITHDREW THE COMPLAINT AS IT RELATES TO JAMES BLACKMORE). MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT ON OR ABOUT AUGUST 16TH THE AGGRIEVED PERSONS WERE DISCHARGED BY GRAHAM MOYER, THE MANAGER OF THE RESPONDENT COMPANY, BECAUSE OF THEIR MEMBERSHIP IN AND SUPPORT OF THE COMPLAINANT TRADE UNION.

THE RESPONDENT DENIES THE COMPLAINT AND ALLEGES THAT THE FIVE AGGRIEVED PERSONS WERE DISCHARGED FOR CAUSE.

MORE PARTICULARLY, THE RESPONDENT ALLEGES THAT THE FIVE EMPLOYEES WERE DISCHARGED FOR BEING LATE FOR WORK, FAILING TO REPORT FOR WORK AND GROSS NEGLEGENCE IN THE PERFORMANCE OF THEIR DUTIES. THE RESPONDENT FURTHER ALLEGES THAT THE DECISION TO DISCHARGE THE EMPLOYEES IN QUESTION WAS MADE PRIOR TO THE RESPONDENT HAVING ANY KNOWLEDGE OF A PENDING CERTIFICATION APPLICATION BY THE COMPLAINANT UNION.

THE SOLE ISSUE FOR DETERMINATION BY THE BOARD IN THIS COMPLAINT IS WHETHER OR NOT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT ON AUGUST 16TH, 1965 BECAUSE OF THEIR UNION ACTIVITY. THE EVIDENCE RELATING TO THE CONDUCT OF THE AGGRIEVED PERSONS AND THE MANNER IN WHICH THEY DISCHARGED THEIR JOB RESPONSIBILITIES IS ONLY OF CONCERN IN THE ASSISTANCE IT GIVES TO THE BOARD IN DETERMINING THE ISSUE BEFORE IT. WHILE THE BOARD IS NOT

CALLED UPON TO DECIDE WHETHER OR NOT THE RESPONDENT WAS JUSTIFIED IN DISCHARGING THE AGGRIEVED PERSONS, IN THE INSTANT CASE, WE FIND IT RELEVANT TO COMMENT ON THE EVIDENCE RELATING TO THE REASONS GIVEN BY THE RESPONDENT FOR THE DISCHARGE OF THE AGGRIEVED PERSONS.

THE EVIDENCE IS THAT THE RESPONDENT OPERATED ON A TWO SHIFT BASIS, 24 HOURS A DAY, SEVEN DAYS A WEEK. THE EMPLOYEES ON THE DAY SHIFT REGULARLY WORKED 10. HOURS AND THE EMPLOYEES ON THE NIGHT SHIFT REGULARLY WORKED 12. HOURS. ON BOTH SHIFTS THE EMPLOYEES REGULARLY WORKED SIX AND SEVEN DAYS A WEEK. AT THE TIME OF THEIR DISCHARGE ON AUGUST 16TH, BELZNER, BILLYARD, BROWN AND COLE WORKED ON THE DAY SHIFT AND BLACKMORE WORKED ON THE NIGHT SHIFT.

THE TIME CARDS FOR THE AGGRIEVED PERSONS WERE FILED AT THE HEARING OF THE BOARD AS AN EXHIBIT. THEIR CARDS SHOW THAT BELZNER AND BILLYARD WERE LATE SOME SIX TIMES DURING THEIR EMPLOYMENT WITH THE RESPONDENT AND BROWN WAS LATE ON TWO OCCASIONS. BLACKMORE WAS ONLY LATE ON HIS FIRST DAY OF WORK AND COLE WAS NEVER LATE. IN OUR OPINION, THE LATENESS RECORD OF BROWN, BLACKMORE AND COLE CAN ONLY BE DESCRIBED AS FROM GOOD TO EXCELLENT. WHILE THE LATENESS RECORD OF BELZNER AND BILLYARD MAY HAVE BEEN OPEN TO CRITICISM, THE EVIDENCE IS THAT THE RESPONDENT AT NO TIME ISSUED A WARNING OR EVEN MENTIONED THEIR LATENESS TO THEM.

BASED ON THE VIVA VOCE EVIDENCE AND THE TIME CARDS IT APPEARS THAT BILLYARD WAS ABSENT FIVE DAYS SINCE HE BEGAN TO WORK FOR THE RESPONDENT ON JUNE 21ST. HE COULD NOT RECALL THE CIRCUMSTANCES OF HIS ABSENCE. BELZNER ADMITTED THAT HE HAD BEEN ABSENT ON THREE OCCASIONS SINCE HE COMMENCED TO WORK FOR THE RESPONDENT ON MAY 20TH. HIS EVIDENCE IS THAT ON ALL THREE OCCASIONS HE SECURED THE PERMISSION OF HARRY CULP, THE FOREMAN AT THE PIT. BELZNER TESTIFIED THAT CULP HAD ASKED HIM TO WORK OVERTIME AFTER HIS REGULAR SHIFT ON FRIDAY, AUGUST 13TH. BELZNER'S EVIDENCE IS THAT HE ARRANGED FOR ANOTHER EMPLOYEE TO WORK THE OVERTIME HOURS BUT DID NOT INFORM CULP AND DID NOT KNOW WHETHER THE OTHER EMPLOYEE, IN FACT, DID WORK THE OVERTIME HOURS.

THE EVIDENCE ADDUCED AT THE HEARING IS THAT BROWN WAS ABSENT FIVE TIMES BETWEEN APRIL 5TH WHEN HE STARTED HIS EMPLOYMENT WITH THE RESPONDENT AND THE END OF JULY. HE TESTIFIED THAT WHENEVER HE WAS ABSENT HE INFORMED CULP IN ADVANCE AS SOON AS POSSIBLE. THE EVIDENCE IS THAT MOYER ALLOWED HIM TWO DAYS HOLIDAYS AT THE END OF JULY, BROWN TESTIFIED THAT HE WAS ABSENT FROM AUGUST 9TH TO 11TH DUE TO ILLNESS WHICH REQUIRED HIM TO SEE HIS DOCTOR AND HAVE X-RAYS. IMMEDIATELY AFTER SEEING HIS DOCTOR ON AUGUST 9TH HE INFORMED THE RESPONDENT THAT HE WOULD NOT

RETURN TO WORK UNTIL AUGUST 12TH. THE EVIDENCE IS THAT ON AUGUST 13TH HE TOLD MOYER HE WOULD AGAIN BE ABSENT ON AUGUST 16TH BECAUSE OF A FURTHER APPOINTMENT WITH HIS DOCTOR.

BLACKMORE'S TIME CARDS SHOW ONLY A FEW OCCASIONS WHEN HE WORKED LESS THAN SIX OR SEVEN DAYS IN A WEEK AND NO EVIDENCE WAS ADDUCED AT THE HEARING RELATING TO THESE OCCASIONS. THERE IS A CONFLICT BETWEEN THE EVIDENCE OF BLACKMORE AND MOYER. HOWEVER. AS TO WHETHER HE WAS ONLY GRANTED A COUPLE OF HOURS OFF ON THE EVENING OF AUGUST 13th FOR HIS WEDDING REHEARSAL AND WAS TO RETURN TO WORK FOR THE REMAINDER OF THE SHIFT. OR WHETHER MOYER HAD GIVEN HIM FOUR FULL DAYS OFF FROM THE END OF THE NIGHT SHIFT ON AUGUST 12TH FOR HIS MARRIAGE. WE FIND IT DIFFICULT TO RECONCILE MOYER'S EVIDENCE ACCORDING TO WHICH HE VIRTUALLY TOLD ANOTHER EMPLOYEE FAUCETT HE DID NOT HAVE TO RETURN TO THE NIGHT SHIFT FOLLOWING THE WEDDING REHEARSAL, WHILE AT THE SAME TIME INSISTING THAT BLACKMORE, WHO WAS THE PERSON GETTING MARRIED THE FOLLOW-ING DAY. HAD TO RETURN TO WORK FOLLOWING THE REHEARSAL. ON ALL THE EVIDENCE WE FIND THAT MOYER DID NOT EXPECT BLACKMORE TO REPORT TO WORK ON THE NIGHT SHIFT ON AUGUST 13TH.

COLE'S RECORD, WITH THE EXCEPTION OF A COUPLE OF DAYS IN JULY AND AUGUST WHEN HE WAS ABSENT DUE TO INJURIES INCURRED AT THE PIT, REVEALS THAT HE WAS ABSENT ONLY TWO DAYS. ONE OF THOSE DAYS WAS AUGUST 14TH, WHEN HE HAD PERMISSION TO BE ABSENT SINCE HE WAS BEST MAN AT BLACK-MORE'S WEDDING.

IN OUR VIEW, THE ABSENTEE RECORD OF COLE AND BLACKMORE LEAVES LITTLE TO BE DESIRED, PARTICULARLY WHEN ONE TAKES INTO ACCOUNT THAT THEIR TIME CARDS SHOW THAT THEY BOTH REGULARLY WORKED TWELVE AND THIRTEEN HOURS A DAY, SIX AND SEVEN DAYS A WEEK. ALSO WHEN ONE CONSIDERS THE LONG WORK WEEK BELZNER'S AND BROWN'S ABSENTEE RECORDS ARE NOT DISCREDITABLE. BROWN CAN HARDLY BE BLAMED FOR HIS ILL-NESS IN THE WEEK COMMENCING AUGUST 9TH. HILLYARD'S ABSENTEEISM MAY BE OPEN TO CRITICISM, BUT THE EVIDENCE IS THAT NEITHER HE NOR ANY OF THE AGGRIEVED PERSONS WERE SPOKEN TO BY THE RESPONDENT CONCERNING ATTENDANCE ON THE JOB. WE WOULD MENTION THAT THERE IS NO EVIDENCE BEFORE US UPON WHICH TO COMPARE THE LATENESS OR ABSENCE RECORDS OF THE AGGRIEVED PERSONS WITH THOSE OF OTHER EMPLOYEES.

WITH REGARD TO JOB PERFORMANCE MOYER'S EVIDENCE IS THAT THE RESPONDENT HAD A MAINTENANCE PROGRAM FOR ITS EUCLIDS THAT HE PERSONALLY INSTRUCTED THE DRIVERS ON THE SERVICING OF THEIR MACHINES. ACCORDING TO MOYER IT WAS THE RESPONSIBILITY OF EACH DRIVER TO CHANGE THE OIL AND FILTERS EVERY SPECIFIED NUMBER OF HOURS AND THIS SERVICING WAS DONE EVEN IF IT INVOLVED TAKING THE MACHINE OUT OF

PRODUCTION. THE EVIDENCE OF DENIS EVANS, THE PRESIDENT OF THE COMPANY, HOWEVER, IS THAT THERE WAS NO REAL MAINTENANCE PROGRAM FOR THE EUCLIDS SINCE THEY WERE IN USE ON A 24 HOUR A DAY BASIS. MOYER TESTIFIED THAT NONE OF THE AGGRIEVED PERSONS, ALL OF WHOM, WITH THE EXCEPTION OF BILLYARD, WERE EUCLID DRIVERS, PROPERLY SERVICED THEIR MACHINES.

Moyer in his evidence was particularly critical of the manner in which Belzner serviced his Euclid. Moyer in his examination—in—chief testified that he observed Belzner sitting around while one of the two mechanics in the employ of the respondent changed the oil in his Euclid. In cross—examination Moyer admitted that he could not specifically recall any incident when he had seen Belzner sitting around while a mechanic changed the oil. Moyer insisted, however, that he had often seen Belzner sitting around.

BELZNER TESTIFIED THAT HE HAD NEVER RECEIVED ANY INSTRUCTIONS FROM MOYER CONCERNING THE MAINTENANCE OF HIS EUCLID. BELZNER'S EVIDENCE IS THAT THE ONLY INSTRUCTIONS HE RECEIVED WERE GIVEN TO HIM BY THE EMPLOYEE WHO TAUGHT HIM HOW TO DRIVE HIS EUCLID. THIS EMPLOYEE SHOWED HIM HOW TO CHANGE THE OIL AND FILTERS. BELZNER FURTHER TESTIFIED THAT THE ONLY TIME THE EUCLIDS WERE SERVICED WAS WHEN THE PLANT, FOR A VARIETY OF REASONS, BROKE DOWN. WHEN THAT HAPPENED CULP WOULD TELL THE DRIVERS TO BRING THEIR MACHINE IN TO CHANGE THE OIL AND FILTERS. BELZNER'S EVIDENCE IS THAT HE ALWAYS CHANGED THE OIL AND FILTER HIMSELF AND HE SPECIFICALLY DENIED THAT HE HAD EVER SAT AROUND AND LET ONE OF THE MECHANICS DO IT. BLACKMORE AND BELZNER WHO USE THE SAME EUCLID ON ALTERNATING SHIFTS BOTH TESTIFIED THAT WHEN THEY CAME ON SHIFT THE OTHER DRIVER HAD ALWAYS FUELLED THE MACHINE AND CHECKED THE OIL AND WATER.

Moyer in his examination—in—chief testified that it was difficult to keep Billyard on the job and that whenever he had an opportunity he spent his time reading magazines. Moyer testified that he spoke to him about this practice on many occasions. In cross—examination Moyer testified that he had spoken to Billyard about reading on the job on three occasions. He was, however, only able to recall one particular occasion. According to Billyard's evidence Moyer only spoke to him on one occasion about reading a magazine on the job.

Moyer testified that while Brown was not a "Bad" Euclid driver he wasted a lot of time standing around talking to other drivers and thereby slowing down production. Moyer testified that he had put his stop watch on Brown on one occasion and observed him talking to another employee for twenty minutes while he was supposed to be working and that on another occasion he "clocked" him for a period of

THREE HOURS DOING NOTHING. HIS EVIDENCE IS THAT HE TOLD BROWN TO GET TO WORK ON THE FIRST OCCASION, BUT THAT HE SAID NOTHING TO HIM ON THE LATTER OCCASION.

BLACKMORE'S EVIDENCE IS THAT ABOUT A MONTH PRIOR TO HIS DISCHARGE HE HAD DOZED OFF WHILE DRIVING HIS EUCLID AND HAD TURNED IT OVER ON AN EMBANKMENT. BLACKMORE TESTIFIED THAT SUBSEQUENT TO THE ACCIDENT CULP TOLD HIM THAT IF HE WAS CAUGHT SLEEPING ON HIS MACHINE AGAIN HE WOULD BE DISMISSED. THE EVIDENCE IS THAT MOYER SAID NOTHING TO HIM ABOUT IT. THERE WAS CONSIDERABLE EVIDENCE ADDUCED BY THE RESPONDENT WHICH SEEMED TO SUGGEST THAT BLACKMORE IMPROPERLY USED GASOLINE FROM THE FUEL PUMP AT THE PIT. MOYER ADMITTED IN CROSS-EXAMINATION, HOWEVER, THAT THE CIRCUMSTANCES UNDER WHICH BLACKMORE HAD SECURED THE GASOLINE ESSENTIALLY CONFORMED WITH THE POLICY OF THE RESPONDENT REGARDING THE USE OF GASOLINE BY EMPLOYEES.

COLE TESTIFIED THAT ABOUT A MONTH PRIOR TO HIS DISCHARGE HE HAD DRIVEN A DIESEL TRUCK OWNED BY ANOTHER COMPANY IN THE PIT. Some TIME LATER HE MENTIONED THE INCIDENT TO MOYER. ACCORDING TO BOTH MOYER AND COLE, MOYER ONLY SAID TO HIM THAT HE COULD LOSE HIS OWN JOB AND THAT OF THE OTHER DRIVER FOR HIS ACTION SINCE THE TRUCK WAS NOT THE PROPERTY OF THE RESPONDENT.

MOYER TESTIFIED IN HIS EXAMINATION—IN-CHIEF THAT TWO DRIVE SHAFTS WERE BROKEN THIS SUMMER AND THAT THESE WERE THE ONLY TWO DRIVE SHAFTS THAT HAD BEEN BROKEN IN HIS SEVENTEEN YEARS WITH THE PIT OPERATION. IN CROSS—EXAMINATION HE ADMITTED THAT A THIRD DRIVE SHAFT WAS BROKEN ON A EUCLID LATER THIS SUMMER AND THAT ONE HAD BEEN BROKEN LAST SUMMER. HE FURTHER TESTIFIED THAT FOUR OR FIVE CLUTCHES HAD BEEN "TORN OUT" THIS SEASON AS A RESULT OF DRIVERS CHANGING GEARS ON THE GRADE CONTRARY TO INSTRUCTIONS. BOTH EVANS AND MOYER TESTIFIED THAT THE ENGINES IN FOUR OF THE EUCLIDS HAD BEEN "BURNED OUT" AND HAD TO BE REPLACED AT CONSIDERABLE EXPENSE.

IN HIS EXAMINATION—IN—CHIEF MOYER ATTRIBUTED ALL THE DAMAGE TO THE MACHINES THIS SEASON TO THE FOUR AGGRIEVED PERSONS WHO WERE EUCLID DRIVERS. IN CROSS—EXAMINATION, HOWEVER, MOYER ADMITTED THAT NONE OF THE AGGRIEVED PERSONS HAD BEEN DRIVING THE EUCLIDS AT THE TIME THE DRIVE SHAFTS WERE BROKEN OR WHEN THE ENGINES "BURNED OUT". FURTHER, HE COULD NOT SPECIFICALLY RELATE THE CLUTCH DAMAGE TO ANY OF THE AGGRIEVED PERSONS. MORE PARTICULARLY, MOYER IN HIS CROSS—EXAMINATION ADMITTED THAT ONE NAMED STUDENT HIRED FOR THE SCHOOL VACATION PERIOD WAS DRIVING A EUCLID WHEN IT "BURNED OUT" IN EARLY JULY. HE FURTHER ADMITTED THAT A SECOND NAMED STUDENT WAS ALSO DRIVING A EUCLID WHEN THE ENGINE "BURNED OUT" AND THAT THE SAME STUDENT HAD TURNED A EUCLID OVER AN EMBANKMENT IN THE LATTER PART OF AUGUST.

MOYER WENT ON TO ADMIT THAT A THIRD NAMED EMPLOYEE WAS DRIVING A EUCLID WHEN IT "BURNED OUT" AND THAT YET AGOTHER." DRIVER HAD BROKEN A DRIVE SHAFT WHEN HE DROVE A EUCLID BACKWARD DOWN A GRADE. HE DID NOT DISPUTE THAT LAST SUMMER A DRIVER HAD FALLEN ASLEEP AND HAD DRIVEN HIS EUCLID INTO A SWAMP. HE ADMITTED THAT NONE OF THE DRIVERS INVOLVED HAD BEEN DISCHARGED.

THE ADMISSIONS MADE BY MOYER IN HIS CROSS-EXAMINATION CLEARLY SUGGESTS TO US THAT DRIVERS OTHER THAN THE AGGRIEVED PERSONS WERE AT LEAST AS RESPONSIBLE FOR THE DAMAGE DONE TO THE EUCLIDS AS THE AGGRIEVED PERSONS. INDEED, THE ONLY DAMAGE TO A EUCLID SPECIFICALLY ATTRIBUTED TO ONE OF THE AGGRIEVED PERSONS WAS THE DAMAGE DONE TO THE EUCLID WHICH BLACKMORE OVERTURNED. ALSO, IN VIEW OF MOYER'S EVIDENCE THAT FIVE OF THE EUCLIDS WERE THIRTEEN AND FOURTEEN YEARS OLD, IT IS REASONABLE TO ASSUME THAT SOME OF THE REPAIR COSTS INCURRED THIS YEAR MUST BE ACCOUNTED TO THE WEAR AND TEAR ON THE MACHINES DUE TO HEAVY USAGE IN PREVIOUS YEARS.

WHILE IT MAY BE THAT MOYER HAD JUSTIFICATION TO DISCHARGE BILLYARD WHEN HE FOUND HIM READING ON THE JOB, OR BROWN WHEN HE OBSERVED HIM TALKING AND WASTING TIME, OR COLE FOR DRIVING THE TRUCK OF ANOTHER COMPANY, OR BLACKMORE FOR OVERTURNING A EUCLID, THE FACT IS THAT WHEN THESE INCIDENTS OCCURRED HE DID NOT DISCHARGE THEM. THE EVIDENCE RELATING TO THE JOB PERFORMANCE OF THE AGGRIEVED PERSONS, TAKING INTO ACCOUNT THE APPARENT EXAGGERATIONS AND MANY DISCREPANCIES IN MOYER'S TESTIMONY, HOWEVER, BY NO MEANS CONVINCES US THAT THE AGGRIEVED PERSONS WERE LESS CAPABLE IN DOING THEIR JOBS THAN THE OTHER EUCLID DRIVERS WITH RESPECT TO WHOM THERE IS EVIDENCE. FURTHER THERE IS A PAUCITY OF EVIDENCE TO SUPPORT THE RESPONDENT'S ALLEGATIONS THAT THE AGGRIEVED PERSONS WERE GUILTY OF "GROSS NEGLIGENCE" IN THE PERFORMANCE OF THEIR DUTIES.

Moyer testified that he made his decision to discharge the aggrieved persons and two other employees on Saturday Morning, August 14th. He admitted that his immediate provocation for taking this action was that at least some of the aggrieved persons had failed to report for work on the night shift on Friday, August 13th and they gave no notification that they would not be at work that night. Moyer's evidence is that he telephoned Evans on Saturday morning and secured his approval to discharge the men. Evans testified that he received a telephone call from Moyer on Saturday morning who told him that he was beside himself because a "bunch" of employees who were to come in at midnight did not turn up nor did they call to say they here not coming. Moyer suggested that they should eliminate the men creating their problems and that he had drawn up a list of eight employees for discharge. Evans!

EVIDENCE IS THAT HE GAVE HIS APPROVAL. THE EVIDENCE OF CULP, HOWEVER, IS THAT MOYER INFORMED HIM THAT HE (MOYER) AND EVANS HAD BEEN REVIEWING THE PAYROLL COSTS WHICH WERE OUT OF LINE AND THEY HAD DECIDED TO CUT BACK ON STAFF. ACCORDING TO THE EVIDENCE OF BOTH MOYER AND EVANS NO MENTION OF PAYROLL COSTS WAS MADE DURING THEIR CONVERSATION.

IN HIS CROSS-EXAMINATION MOYER AT FIRST VIGOROUSLY DENIED THAT WITH THE POSSIBLE EXCEPTION OF BLACKMORE, NONE OF THE AGGRIEVED PERSONS WERE TO REPORT FOR WORK ON THE NIGHT SHIFT ON AUGUST 13TH. WHEN CONFRONTED WITH THE FACT JAMES BLACKMORE, COLE, BILLYARD, BROWN AND BELZNER WERE ALL ON THE DAY SHIFT HE ADMITTED THAT NONE OF THEM WERE DUE TO REPORT AT MIDNIGHT ON THE NIGHT SHIFT OF AUGUST 13TH. FURTHER, THE BOARD HAS ALREADY FOUND ON THE EVIDENCE THAT MOYER DID NOT EXPECT BLACKMORE TO REPORT ON THE NIGHT SHIFT ON AUGUST 13TH. IN OTHER WORDS WE FIND THAT THE ALLEGED PROVOCATION FOR THE DISCHARGE OF THE AGGRIEVED PERSONS WAS IN FACT NON-EXISTENT.

MOYER TESTIFIED THAT SOME TIME EARLY IN THE SEASON THERE HAD BEEN CONSIDERABLE TALK AMONG THE MEN ABOUT A UNION. AND THAT ONE OF THE OLDER EMPLOYEES HAD MENTIONED TO HIM THAT THE PLACE NEEDED A UNION. EVANS TESTIFIED THAT BY JUNE, BECAUSE THE RESPONDENT WAS HAVING DIFFICULTY IN FILLING ITS CUSTOMER ORDERS, IT COMMENCED TO OPERATE ON TWO SHIFTS ON A 24 HOUR BASIS. SEVEN DAYS A WEEK. HIS EVIDENCE IS THAT UNTIL THE END OF JUNE THE EMPLOYEES HAD BEEN WORKING STRAIGHT TIME FOR OVERTIME WORK. AFTER CONSULTATION WITH MOYER, EVANS SAID HE DECIDED TO GIVE THE EMPLOYEES WAGES AND WORKING CONDITIONS THAT WERE EQUAL TO OR SLIGHTLY BETTER THAN THOSE PROVIDED BY THE COLLECTIVE AGREEMENT WHICH WAS BINDING ON THE LARGEST SAND AND GRAVEL COMPANY IN THE AREA. THIS MEANT THAT THERE WAS A BASIC HOURLY INCREASE IN WAGES WITH GRADUATED OVER-TIME RATES. THE NEW WAGES AND WORKING CONDITIONS WHICH BECAME EFFECTIVE ON JULY 1ST WERE ANNOUNCED AT A MEETING OF THE EMPLOYEES CALLED BY THE RESPONDENT. MOYER TESTIFIED THAT AT THE MEETING, AFTER THE NEW WORKING CONDITIONS WERE ANNOUNCED BOTH HE AND EVANS TOLD THE MEN THAT IF THEY WANTED A UNION IT WAS UP TO THEM AND THAT THEY ONLY HAD TO SAY SO. MOYER ADMITTED IN CROSS-EXAMINATION, HOWEVER, THAT ONLY THE "OLDER" EMPLOYEES, THAT IS, THOSE EMPLOYEES WHO HAD WORKED FOR THE PREVIOUS OWNER ON EITHER A YEAR ROUND OR SEASONAL BASIS FOR A NUMBER OF YEARS, WERE INVITED TO THE MEETING. NONE OF THE EMPLOYEES HIRED FOR THE FIRST TIME THIS YEAR, WHICH INCLUDES ALL THE AGGRIEVED PERSONS, WERE NOTIFIED OF THE MEETING. MOYER DENIED THAT THE "NEW" EMPLOYEES WERE PREVENTED FROM ATTENDING. BLACKMORE'S EVIDENCE, HOWEVER, IS THAT HE AND ANOTHER EMPLOYEE SHEEN JOHNSON ATTEMPTED TO ATTEND THE MEETING IN MOYER'S OFFICE BUT THAT AN "OLDER" EMPLOYEE DENIED THEM ENTRY. MOYER ADMITTED THAT HIS REMARKS AT THE MEETING REGARDING A UNION WERE ONLY INTENDED FOR THE "OLDER" EMPLOYEES. HE TESTIFIED THAT "THEY" FELT THAT IF THE MORE OR LESS

PERMANENT EMPLOYEES WANTED A UNION IT WAS ALL RIGHT, BUT THAT HE LOOKED ON THE "NEW" EMPLOYEES AS MERELY SEASONAL HELP.

Moyer's further evidence is that some time in July, Haggarty, the employee who had spoken to him in June about the union, asked him for a copy of the collective agreement upon which the respondent's changes in wages and working conditions had been based. According to Moyer he agreed to get Haggarty a copy of the agreement. A week later Haggarty reminded Moyer of his request and Moyer did provide him with a copy of the agreement. Haggarty returned the agreement some ten days later. Moyer in his cross-examination stated that he surmised that some of the men were interested in getting a union. He said that this surmise was, in part, based on Haggarty's request for the collective agreement. Also he had observed a number of employees talking in groups at the side of the pit at various times and assumed that they were talking about a union.

JOHN DICKIE, ONE OF THE "OLDER" EMPLOYEES, TESTIFIED THAT ON FRIDAY, AUGUST 13TH, MOYER ASKED HIM IF HE HAD HEARD ANY-THING ABOUT A UNION COMING IN. DICKIE'S EVIDENCE IS THAT HE REPLIED IN THE AFFIRMATIVE AND THAT HE HAD HEARD ABOUT IT AWHILE AGO. MOYER REPLIED THAT IF THE "OLDER" FELLOWS WANTED A UNION "THEY" WOULD GET THEM ONE. DICKIE TESTIFIED THAT MOYER WENT ON TO SAY THAT HE WOULD NOT BE SURPRISED IF SOME OF THE NEW FELLOWS WANTED TO GET A UNION IN HERE AND HE NAMED Brown in particular. Moyer originally testified that he AGREED WITH DICKIE'S EVIDENCE AS TO THE CONTENT OF THEIR CONVERSATION. WHEN HE SUBSEQUENTLY RELATED THE CONVERSATION HIMSELF, HOWEVER, MOYER TESTIFIED THAT DICKIE STATED THAT HE DID NOT KNOW ANYTHING ABOUT THE UNION. IN VIEW OF ALL THE OTHER INCONSISTENCIES THAT WE FIND IN MOYER'S TESTIMONY, WE ACCEPT THE EVIDENCE OF DICKIE OVER THAT OF MOYER. UNDISPUTED EVIDENCE OF SHEEN JOHNSON IS THAT WHEN HE ASKED Moyer on August 16th why the aggrieved persons were dis-CHARGED MOYER TOLD SHEEN TO MIND HIS OWN BUSINESS.

Moyer's own testimony is that he was aware early in June that some of the employees were interested in getting a union at the pit. It is not unreasonable to assume that by changing its wages and working conditions on July 1st to bring them in Line with the collective agreement in effect with the largest sand and gravel company in the area, the respondent hoped to Quell any interest of the employees in having a trade union represent them. In any event, while it may be that Moyer found the prospect of a union acceptable if the "older" employees wanted one, his evidence makes it clear that he was not at all kindly disposed to the prospect of a union being brought in by the "new" employees, who he testified he regarded as seasonal help. We would mention that the "new"

EMPLOYEES CONSTITUTED A MAJORITY OF ALL THE EMPLOYEES. AGAIN BY MOYER'S OWN ADMISSION HE WAS AWARE IN THE LATTER PART OF JULY THAT SOME OF THE EMPLOYEES WERE STILL INTERESTED IN HAVING A UNION. HAVING REGARD TO THE CLOSE SCRUTINY WHICH MOYER'S EVIDENCE REVEALS THAT HE KEPT ON THE ENTIRE OPERATION AT THE PIT, AND HIS CONVERSATION WITH DICKIE, WE ARE SATISFIED THAT MOYER WAS AWARE OF THE COMPLAINANT S ORGANIZING CAMPAIGN AND THAT BY AUGUST 13TH HE EITHER KNEW OR BELIEVED THAT THE AGGRIEVED PERSONS WERE SUPPORTERS OF THE COMPLAINANT UNION. THE EVIDENCE IS THAT ALL FIVE AGGRIEVED PERSONS JOINED THE COMPLAINANT IN AUGUST AND BELZNER HAD SIGNED UP TEN OR ELEVEN EMPLOYEES IN THE UNION. IN OUR OPINION, MOYER WAS MOTIVATED TO MAKE HIS DECISION TO DISCHARGE THE AGGRIEVED PERSONS ON AUGUST 14TH IN AN EFFORT TO THWART THE COMPLAINANT UNION'S ORGANIZING CAMPAIGN. IN OUR VIEW, ALL OF THE EVIDENCE LEADS US TO THIS CONCLUSION. MORE PARTICULARLY, EVANS! TESTIMONY AS TO THE DIFFICULTY IN GETTING EMPLOYEES BECAUSE OF THE LABOUR SHORTAGE IN THE AREA AND THE HEAVY PRODUCTION SCHEDULES WHICH THE RESPONDENT WAS ENDEAVOURING TO MEET IS INCONSISTENT WITH THE SUDDEN DISCHARGE OF EIGHT EMPLOYEES. FURTHER, THE EVIDENCE OF THE DIFFERENT REASONS GIVEN BY MOYER TO CULP AND EVANS FOR DISCHARGING THE AGGRIEVED PERSONS LEADS US TO BELIEVE THAT MOYER WAS ATTEMPTING TO CONCEAL HIS TRUE MOTIVATIONS. FINALLY, THE EVIDENCE ADDUCED BY THE RESPONDENT IN SUPPORT OF ITS ALLEGED REASONS FOR THE DISCHARGE OF THE AGGRIEVED PERSONS LENDS LITTLE CREDENCE TO THOSE REASONS.

WE ACCORDINGLY FIND THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT FOR THEIR UNION ACTIVITIES IN CONTRAVENTION OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE BOARD [DIRECTS] THAT THE RESPONDENT FORTHWITH REINSTATE AND EMPLOY THE AGGRIEVED PERSONS TO THE SAME OR LIKE EMPLOY-MENT, THE SAME WAGES AND EMPLOYMENT BENEFITS AS THEY HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF THEIR DISCHARGE ON AUGUST 16TH, 1965. THE BOARD FURTHER DIRECTED THE PARTIES TO MEET WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, SUSTAINED BY THE AGGRIEVED PERSONS BETWEEN OCTOBER 4TH AND OCTOBER 21ST AND WHICH MAY HAVE BEEN SUSTAINED BETWEEN OCTOBER 21ST AND THE DATE OF THEIR ACTUAL RE-EMPLOYMENT BY THE RESPONDENT.

AS COMPENSATION FOR THE LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM AUGUST 16TH TO AND INCLUDING OCTOBER 4TH, 1965, THE RESPONDENT FORTHWITH SHALL PAY THE FOLLOWING SUMS OF MONEY TO THE AGGRIEVED PERSONS:-

JAMES BELZNER - \$525.00
FRED BILLYARD - 260.00
JACK BROWN - 720.00
CLARENCE COLE - 700.00
LESLIE BLACKMORE- 750.00

10800-65-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) v. CURVEPLY WOOD PRODUCTS LTD. (RESPONDENT).

10880-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) v. COOPER-WEEKES LIMITED (RESPONDENT).

10881-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) v. COOPER-WEEKES LIMITED (RESPONDENT).

10932-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) v. COOPER-WEEKES LIMITED (RESPONDENT).

#### REFERENCE TO BOARD PURSUANT TO SECTION 794 DISPOSED OF DURING OCTOBER

10836-65-M: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL.CIO.CLC LOCAL 456 (TRADE UNION) v. JAMES SMART MFG. Co. LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 496 ).

# APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING OCTOBER

10739-65-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 545 (APPLICANT) V. TOWNSHIP OF SCARBOROUGH (RESPONDENT). (WITHDRAWN).

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10763-65-R: International Association of Machinists (Applicant) v. Essex Wire Corporation Limited (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 141, affiliated with the 1.8. of T.C.W. & H. of A. (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED SEPTEMBER 2ND, 1965 IN THIS MATTER, WHEREIN THIS APPLICATION WAS DISMISSED PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE ON THE GROUNDS THAT THE APPLICANT HAVING FAILED TO FILE FORM 9 IN SUPPORT OF 279 MEMBERSHIP DOCUMENTS, THE BOARD THEREFORE FOUND THAT THE APPLICANT HAD FAILED TO SATISFY THE BOARD THAT THE APPLICANT HAD NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS.

AT THE TIME THE APPLICANT MADE ITS REQUEST FOR RECONSIDERATION OF THE BOARD'S DECISION, IT ALSO DELIVERED TO THE BOARD A COPY OF FORM 9 IN SUPPORT OF THE 279 MEMBERSHIP DOCUMENTS, AND THE BOARD WAS REQUESTED TO EXTEND THE TIME FOR FILING OF FORM 9.

IT WOULD APPEAR FROM THE EVIDENCE THAT MR. DANIEL DEAN, A GRAND LODGE REPRESENTATIVE OF THE APPLICANT, HAD FILED THE 279 MEMBERSHIP DOCUMENTS AND THAT BECAUSE OF AN OVERSIGHT NO FORM 9

WAS FILED IN SUPPORT OF THESE DOCUMENTS PRIOR TO THE BOARD'S DECISION DISMISSING THE APPLICATION. Mr. DEAN ACKNOWLEDGED THAT THE BOARD'S EXAMINER AT THE PRE-HEARING VOTE MEETING HAD BROUGHT TO THE ATTENTION OF THE APPLICANT THE FACT THAT NO FORM 9 HAD BEEN FILED WITH RESPECT TO THE DOCUMENTS IN QUESTION. MR. DEAN ACKNOWLEDGED THAT HE HAD A GREAT DEAL OF EXPERIENCE IN CERTIFICATION MATTERS AND HAD COMPLETED FORM 9 ON NUMEROUS OCCASIONS.

While Mr. Dean attempted to explain his error of omission, no reason was offered which would have precluded the applicant from filing a copy of Form 9 in support of the 279 membership documents in accordance with the Board's Rules of Procedure. While the applicant did file a copy of Form 9 in support of 42 "additional" cards, no attempt was made to file a copy of Form 9 for the 279 cards prior to the Board's decision dated September 2nd, 1965.

BECAUSE OF THE FACT THAT THE BOARD IS COMPELLED TO RELY TO SUCH AN EXTENT ON THE INFORMATION CONCERNING THE COLLECTORS CONTAINED IN FORM 9 AND BECAUSE THE BOARD HAS CONSISTENTLY TREATED THE INFORMATION CONTAINED IN FORM 9 AS GOING TO THE ROOT OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT, THE BOARD IS OF OPINION THAT THE FAILURE TO FILE FORM 9 PRIOR TO ITS DECISION DATED SEPTEMBER 2ND, 1965 IS MORE THAN A TECHNICAL IRREGULARITY BUT IS A SUBSTANTIAL DEFECT FOR WHICH THE APPLICANT MUST ASSUME FULL RESPONSIBILITY AND FROM WHICH THE BOARD SHOULD NOT GRANT RELIEF BY EXTENDING THE TIME FOR FILING IN THE MANNER REQUESTED BY THE APPLICANT (SEE DOMINION STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, p. 447; WEBSTER AIR EQUIPMENT CO. LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 155-159, \$16,110, C.L.S. 76-598).

IT IS THE BOARD'S USUAL PRACTICE TO DISMISS AN APPLICATION FOR CERTIFICATION WHERE THE APPLICANT HAS FAILED TO FILE FORM 9 AND THE BOARD IS OF OPINION THAT THERE IS NO EVIDENCE BEFORE IT WHICH WOULD CAUSE THE BOARD TO DEPART FROM THAT PRACTICE IN THE INSTANT CASE (SEE SENTRY DEPARTMENT STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, p. 78; HAMILTON GEAR AND MACHINE COMPANY DIVISION OF HAMSTELL CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1963, p. 226; PAUL SENSON CARRYING ON BUSINESS AS PICADILLY PUBLIC HOUSE CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1964, p. 537).

THE BOARD THEREFORE CONFIRMS ITS DECISION DATED SEPTEMBER 2ND, 1965."

#### INDEXED ENDORSEMENT - CERTIFICATION

10731-65-R: IROQUOIS FALLS AND CALBERT DISTRICT PUBLIC SERVICE EMPLOYEES (APPLICANT) v. ABITIBI POWER & PAPER COMPANY, LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION MADE AUGUST 7TH, 1965 WHEREIN THE APPLICANT HAS APPLIED TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT AT ITS TROQUOIS HOTEL AT TROQUOIS FALLS.

An applicant with the same name as the applicant in this matter, previously on May 17th, 1965 made a similar application and the Board in that matter dismissed the application on June 7th, 1965 having found that the applicant had no documentary evidence in the form of a constitution or by-laws which would evidence its existence as a trade union within the meaning of section 1(1)(1) of the Labour Relations Act.

In the first application the applicant filed with the Board Minutes of a meeting of the application which took place on May 12th, 1964. These minutes indicated that 13 employees in the proposed bargaining unit were in attendance at the meeting. The matters dealt with at the meeting as evidenced by the minutes were as follows:

A MOTION WAS ADOPTED BY WHICH THE EXECUTIVE OF THE APPLICANT WOULD CONSIST OF 3 ELECTED OFFICERS, PRESIDENT, VICE-PRESIDENT AND SECRETARY-TREASURER. AN ELECTION WAS HELD AT THAT MEETING AND CERTAIN EMPLOYEES OF THE RESPONDENT WERE ELECTED TO FILL THE 3 OFFICES. A FURTHER MOTION WAS ADOPTED TO THE EFFECT THAT THE INITIATION FEE BE \$1.00 AND THAT THE MONTHLY DUES BE FIXED AT \$1.00 WHICH MAY BE INCREASED IF NECESSARY AND FURTHER THAT THE PAYMENT OF SUCH DUES COMMENCE JUNE 1ST, 1965. A FURTHER MOTION WAS ADOPTED THAT "THE LOCAL UNION BE THE IROQUOIS FALLS AND CALVERT DISTRICT PUBLIC SERVICE EMPLOYEES". A MOTION WAS THEN MADE AUTHORIZING AN APPLICATION TO THIS BOARD FOR CERTIFICATION AND AUTHORIZING THE OFFICERS TO CARRY ON THE BUSINESS OF THE LOCAL UNTIL CERTIFICATION IS ACHIEVED. FOLLOWING THE SUGGESTION THAT ONE MEETING A MONTH BE HELD THE MEETING OF MAY 12TH, 1965 WAS ADJOURNED.

THE MEETING OF MAY 12TH, 1965 WAS THE ONLY FORMAL MEETING OF THE MEMBERS OF THE FIRST APPLICATION FOR CERTIFICATION.

FOLLOWING THE DISMISSAL OF THE FIRST APPLICATION FOR CERTIFICATION, ALL BUT 4 OF THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT ATTENDED A MEETING DURING THE MONTH OF JULY, 1965 AT WHICH A DOCUMENT HEADED CONSTITUTION —— BY-LAWS —— RITUAL WAS DISCUSSED CLAUSE BY CLAUSE, VOTED ON, AND ADOPTED BY THE PERSONS IN ATTENDANCE. WHILE THE MINUTES OF THE JULY MEETING WERE NOT AVAILABLE FOR THE HEARING IN THIS MATTER, THE BOARD WAS ADVISED THAT NO OTHER MATTER WAS DEALT WITH AT THE JULY MEETING OTHER THAN THE ADOPTION OF THE CONSTITUTION, BY-LAWS AND RITUAL.

THE ONLY MEETING ATTENDED BY THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT BETWEEN THE DATE OF DISMISSAL OF THE FIRST APPLICATION AND THE HEARING IN THIS MATTER WAS THE ONE MEETING HELD IN JULY, 1965. THERE HAS BEEN NO ELECTION OF OFFICERS SINCE THE CONSTITUTION AND BY-LAWS WERE ADOPTED AND THE OFFICERS ELECTED AT THE MEETING DATED MAY 12TH, 1965 WERE NOT CONFIRMED AS OFFICERS OF THE APPLICANT IN THIS MATTER AFTER THE ADOPTION OF THE CONSTITUTION AND BY-LAWS.

THE ONLY EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN

THIS APPLICATION IS THE SAME EVIDENCE OF MEMBERSHIP WHICH WAS

SUBMITTED BY THE APPLICANT IN THE FIRST APPLICATION AND ALL SUCH

EVIDENCE OF MEMBERSHIP IS DATED PRIOR TO THE ADOPTION OF THE

CONSTITUTION AND BY-LAWS.

HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THERE HAS NOT BEEN AN ELECTION OF OFFICERS SINCE THE ADOPTION OF THE CONSTITUTION AND BY-LAWS NOR HAS THERE BEEN ANY CONFIRMATION OF ANY PREVIOUSLY ELECTED OFFICERS. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE ELECTION OF OFFICERS HELD ON MAY 12TH, 1965 WAS HELD IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION, AND SUCH OFFICERS WERE NOT INSTALLED IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION AND BY-LAWS, NOR HAVE SUCH OFFICERS TAKEN THE OBLIGATION OF OFFICE REQUIRED OF THE OFFICERS OF THE APPLICANT IN ACCORDANCE WITH ITS BY-LAWS.

The Board accordingly finds that any election which took place on May 12th, 1965, was an election to office in an organization which was not a trade union within the meaning of section 1 (1)(J) of The Labour Relations Act (see the decision of the Board dated June 7th, 1965, Board File No. 10412-65-R).

Since nothing was done between the time that the constitution, by-laws and ritual were adopted at a meeting in July, 1965, and the time this application was made, the Board accordingly finds that the applicant is not a viable entity which can be considered by the Board to be a trade union within the meaning of section 1 (1)(j) of the Labour Relations Act.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

#### INDEXED ENDORSEMENT - TERMINATION

10562-65-R: ROLAND BIGRAS (APPLICANT) v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (RESPONDENT) v. BARRON DIAMOND DRILLING LIMITED (INTERVENER). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application under section 43 of The Labour Relations Act for a declaration that the respondent no longer represents the EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

THE APPLICANT, ROLAND BIGRAS, WHO IS AN EMPLOYEE OF THE INTERVENER COMPANY IN THE BARGAINING UNIT, GAVE EVIDENCE RELATING TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN SUPPORT OF HIS APPLICATION. HE TESTIFIED THAT HE PERSONALLY PREPARED AN EARLIER STATEMENT OF DESIRE REQUESTING THAT THE BOARD TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT TRADE

UNION. HE THEN SECURED THE SIGNATURES OF EMPLOYEES UPON IT AND FORWARDED THE STATEMENT TO THE BOARD. THE REGISTRAR RETURNED THE STATEMENT OF DESIRE TO HIM AND ENCLOSED COPIES OF THE BOARD'S APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS (FORM 18) TOGETHER WITH A COPY OF THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. BIGRAS SAID THAT HE WAS UNCERTAIN AS TO HOW TO PROCEED AT THAT POINT AND ACCORDINGLY SOUGHT THE ADVICE OF A SOLICITOR. DALTON DEAN, WHO PREPARED A NEW STATEMENT OF DESIRE WHICH WAS FORWARDED TO THE BOARD TOGETHER WITH THE COMPLETED Application for Declaration Terminating Bargaining Rights BIGRAS TESTIFIED THAT THE REASON HE HAPPENED TO GO TO MR. DEAN WAS BECAUSE HE WAS THE ONLY LAWYER IN HAILEYBURY. THE LOCATION OF THE COMPANY. HIS EVIDENCE IS THAT HE DID NOT KNOW IF THE COMPANY HAD EVER USED THE SERVICES OF MR. DEAN. BIGRAS TESTIFIED THAT HE SECURED ALL THE SIGNATURES ON THE STATEMENT OF DESIRE OUTSIDE OF THE COMPANY'S PREMISES AND AFTER WORKING HOURS. AFTER SECURING SIGNATURES ON THE STATEMENT OF DESIRE HE RETURNED IT TO DEAN TO BE FORWARDED TO THE BOARD. THE REPRESENTATIVE OF THE INTERVENER COMPANY WHO ATTENDED THE BOARD HEARING ON JULY 12TH STATED THAT THE COMPANY HAS RETAINED MR. DEAN BUT THAT HIS SERVICES HAVE BEEN USED IN CONNECTION WITH THE SETTLEMENT OF AN ESTATE.

THERE IS NO EVIDENCE THAT MANAGEMENT INSTIGATED OR GAVE SUPPORT TO BIGRAS IN THE MAKING OF THIS APPLICATION. WHILE THERE IS SOME EVIDENCE THAT THE SOLICITOR WHO PREPARED THE STATEMENT OF DESIRE FILED IN SUPPORT OF THIS APPLICATION HAS OR IS RENDERING A SERVICE FOR THE COMPANY, THE BOARD HAS ALSO TAKEN INTO ACCOUNT THE EVIDENCE THAT THE ORIGINAL STATEMENT OF DESIRE FILED IN THIS MATTER, UPON WHICH THIS APPLICATION IS BASED, WAS PREPARED BY THE APPLICANT WITHOUT ANY ADVICE OR ASSISTANCE FROM DEAN. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF BARRON DIAMOND DRILLING LIMITED IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

THE RESPONDENT IN ITS REPLY TO THE APPLICATION ALLEGED THAT THE COMPANY HAD INSTIGATED THE PETITION CIRCULATED AMONG THE EMPLOYEES. AT THE OUTSET OF THE HEARING ON JULY 12TH, 1965, IN REPLY TO A QUESTION BY THE CHAIRMAN, THE REPRESENTATIVE OF THE RESPONDENT INFORMED THE BOARD THAT HE HAD NO EVIDENCE TO ADDUCE IN SUPPORT OF THE CHARGE CONTAINED IN THE REPLY.

SUBSEQUENT TO APPLICANT GIVING ALL HIS EVIDENCE IN SUPPORT OF THE APPLICATION, HOWEVER, THE REPRESENTATIVE THEN REQUESTED THAT THE BOARD ADJOURN THE HEARING IN ORDER TO AFFORD HIM AN OPPORTUNITY TO PRODUCE WITNESSES TO GIVE EVIDENCE IN SUPPORT OF THE ALLEGATION CONTAINED IN THE RESPONDENT'S REPLY. AT THE HEARING ON JULY 12TH, THE BOARD RESERVED ITS DECISION ON THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT.

HAVING REGARD TO THE FACT THAT THE REPRESENTATIVE OF THE RESPONDENT INFORMED THE BOARD AT THE OUTSET OF THE CASE THAT HE HAD NO EVIDENCE TO ADDUCE IN SUPPORT OF ITS ALLEGATION OF COMPANY SUPPORT, BUT DID NOT REQUEST AN ADJOURNMENT AT THAT TIME, WE SEE NO REASON TO ACCEDE TO HIS REQUEST WHICH WAS MADE ONLY AFTER ALL THE EVIDENCE IN SUPPORT OF THE APPLICATION WAS BEFORE THE BOARD. THE RESPONDENT SREQUEST ACCORDINGLY IS DENIED."

BOARD MEMBER G. RUSSELL HARVEY DISSENTED AND SAID:-

" | DISSENT.

EVIDENCE SUBMITTED IN SUPPORT OF AN APPLICATION FOR TERMINATION
OF BARGAINING RIGHTS ALWAYS MUST BE ABOVE SUSPICION. IN THE INSTANT
APPLICATION THIS BASIC REQUIREMENT HAS NOT BEEN MET.

ROLAND BIGRAS, THE APPLICANT, TESTIFIED THAT HE ORIGINALLY WENT TO THE OFFICE MANAGER, LAWRENCE. HURST AND ASKED HIM WHAT HE (BIGRAS) COULD DO TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION. HURST REPLIED THAT THE COMPANY WOULD HAVE NOTHING TO DO WITH THE MATTER AND THAT BIGRAS WOULD HAVE TO ACT ON HIS OWN. BIGRAS THEREUPON PREPARED A PENCILLED PETITION, SECURED SIGNATURES UPON IT, AND FORWARDED IT TO THE BOARD. THE BOARD RETURNED THE PETITION TOGETHER WITH THE PROPER FORMS UPON WHICH TO MAKE AN APPLICATION FOR THE TERMINATION OF BARGAINING RIGHTS.

I AM NOT SATISFIED THAT A LAWYER ACTING FOR A COMPANY ON EVEN A SPECIFIC AND PERHAPS UNRELATED INTEREST CAN ACT FOR EMPLOYEES AT THE SAME TIME. IN THIS CASE THERE IS EVIDENCE THAT THE LAWYER WHO PREPARED THE PETITION THAT WAS FILED IN SUPPORT OF THIS APPLICATION ALSO IS ACTING FOR THE COMPANY. EVEN THOUGH THERE IS NO EVIDENCE THAT THE LAWYER ACTED FOR THE COMPANY WITH RESPECT TO THIS APPLICATION, I ASSOCIATE HIM WITH MANAGEMENT FOR THE PURPOSE OF DETERMINING THE WEIGHT TO BE GIVEN TO THE PETITION.

ADDITIONAL CIRCUMSTANCES GIVE ME SOME CONCERN. BIGRAS SOUGHT AND RECEIVED A WAGE ADVANCE FROM THE COMPANY. BIGRAS AND ETHIER, A FELLOW EMPLOYEE, APPEARED AT THE BOARD HEARING. BIGRAS TESTIFIED THAT WHILE THERE HAD BEEN A MEETING OF SOME EMPLOYEES AT HIS HOME AT WHICH HE WAS AUTHORIZED TO SECURE THE ASSISTANCE OF A LAWYER IN PREPARING THE TERMINATION APPLICATION, THERE WAS NO DISCUSSION CONCERNING THE SHARING OF LAWYER'S FEES OR TRAVEL COSTS.

IN ALL THESE CIRCUMSTANCES AND HAVING REGARD TO THE DECISION OF THE BOARD IN THE NATIONAL PAPER GOODS LTD. CASE, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 144-147, 910,429, I GIVE NO WEIGHT TO THE EVIDENCE BEFORE THE BOARD AND WOULD DISMISS THE APPLICATION."

#### INDEXED ENDORSEMENT - SECTION 79A

10836-65-M: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL.CIO.CLC Local 456 (Trade Union) v. James Smart Mfg. Co. Limited (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Pursuant to the provisions of section 79A of The Labour Relations Act, the Minister has referred to the Board the Question whether the trade union is entitled to give notice to bargain to the employer pursuant to the provisions of section 47A of the Act.

THE TRADE UNION WAS A PARTY TO AN AGREEMENT WITH CANADA FOUNDRIES AND FORGINGS LIMITED FOR A UNIT OF EMPLOYEES AT ITS JAMES SMART PLANT AT BROCKVILLE, ONTARIO, WHICH WAS TO REMAIN IN EFFECT UNTIL DECEMBER 6TH, 1965.

FOLLOWING NOTIFICATION THAT CANADA FOUNDRIES & FORGINGS
LIMITED HAS CEASED TO CARRY ON ITS OPERATIONS AT JAMES
SMART PLANT AT BROCKVILLE AND THAT THE OPERATIONS AT THIS
PLANT WERE BEING CARRIED ON BY THE EMPLOYER, THE TRADE UNION,
ON MAY 5TH, 1965, SERVED NOTICE TO THE EMPLOYER OF ITS DESIRE
TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE
ACT.

AT THE HEARING IN THIS MATTER, THE EMPLOYER FILED AS EXHIBITS THE AGREEMENTS ENTERED INTO BETWEEN THE EMPLOYER AND CANADA FOUNDRIES & FORGINGS LIMITED, WHICH MAY BE DESCRIBED AS AN AGREEMENT OF PURCHASE AND SALE AND THE DOCUMENTS IN SUPPORT THEREOF. THE EMPLOYER, THROUGH ITS WITNESS ALSO TESTIFIED THAT THE AGREEMENTS BETWEEN THE EMPLOYER AND CANADA FOUNDRIES & FORGINGS LIMITED WERE CONSUMMATED ON MAY 5TH, 1965.

THE PURCHASE AND SALE AGREEMENT BY ITS TERMS REQUIRED THAT A RESOLUTION OF THE DIRECTORS OF CANADA FOUNDRIES & FORGINGS LIMITED BE PASSED APPROVING THE SALE OF THE ASSETS, RIGHTS AND BUSINESS TO BE PURCHASED BY THE EMPLOYER. IT FURTHER APPEARS FROM THE AGREEMENT THAT AMONG OTHER THINGS INCLUDED IN THE PURCHASE PRICE, WAS THE GOOD WILL RELATING TO THE HEATING EQUIPMENT BUSINESS PREVIOUSLY CARRIED ON BY CANADA FOUNDRIES & FORGINGS LIMITED AND A LIST OF ITS CUSTOMERS. CANADA FOUNDRIES & FORGINGS LIMITED ALSO COVENANTED IN THE AGREEMENT OF PURCHASE AND SALE TO PRESERVE THE GOOD WILL OF ITS CUSTOMERS AND OTHERS WITH WHOM IT HAD BUSINESS RELATIONS AND TO KEEP THE PLANT OPEN AND MAINTAIN NORMAL COMMERCIAL CONTACT AND RELATIONS WITH ITS CUSTOMERS IN ORDER TO PRESERVE CONTINUITY OF SUPPLIER-CUSTOMER RELATIONS UNTIL THE EMPLOYER WAS LEGALLY IN A POSITION TO COMMENCE MANFACTURING OPERATIONS.

CANADA FOUNDRIES & FORGINGS LIMITED ALSO CONVENANTED
TO GIVE THE EMPLOYER'S REPRESENTATIVES FULL ACCESS TO ALL

PROPERTIES, BOOKS, CONTRACTS, COMMITMENTS AND RECORDS
PERTAINING TO THE SAID HEATING EQUIPMENT BUSINESS AND TO
FURNISH THE EMPLOYER WITH ALL SUCH INFORMATION CONCERNING
THE SAID BUSINESS AS IT MAY REASONABLY REQUEST.

CANADA FOUNDRIES & FORGINGS LIMITED WARRANTED THAT ON THE DATE OF CONCLUSION OF THE TRANSACTION THERE WOULD BE NO RESTRICTED COVENANT, MUNICIPAL BY-LAWS OR OTHER LAWS OR REGULATIONS WHICH WOULD IN ANY WAY RESTRICT OR PROHIBIT THE CARRYING ON OF THE SAID HEATING EQUIPMENT BUSINESS AT ITS PRESENT LOCATION AND THAT IT WOULD NOT TAKE ANY ACTION PRIOR TO THE DATE OF CONCLUSION WHICH WOULD MATERIALLY OR ADVERSELY AFFECT THE ASSETS, RIGHTS AND BUSINESS TO BE PURCHASED BY THE EMPLOYER.

Having regard to the whole of the contracts entered into between the employer and Canada Foundries & Forgings Limited and especially clauses above referred to, the Board finds that Canada Foundries & Forgings Limited has sold to the employer that part of its business at its James Smart Plant at Brockville, which was described as its heating equipment business and that the sale constitutes a sale of a business within the meaning of section 47a (1) of The Labour Relations Act.

Accordingly the answer to the question referred to the Board by the Minister is affirmative; the trade union is entitled to give notice to bargain to the employer pursuant to the provisions of section 47a of the Act."

#### ADDENDA

The following cases were inadvertently omitted from the July 1963 and the September 1965 Monthly Reports File No's 6391-63-R and 10651-65-R

6391-63-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 866 (APPLICANT) V. ATLAS STEELS COMPANY, LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The name of the respondent appearing in the style of cause of this application is amended to read: "Atlas Steels Company, Limited".

THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND HELPERS OPERATING AND MAINTAINING EQUIPMENT IN THE BOILER ROOM, COMPRESSOR ROOM, PUMP ROOM AND AIR CONDITIONING UNITS OF THE RESPONDENT AT WELLAND.

THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY REPRESENTED BY THE INTERVENER AND ARE PART OF AN OVERALL

INDUSTRIAL UNIT REPRESENTED BY THE INTERVENER.

THE APPLICANT ARGUED THAT THE STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT ARE ENTITLED TO BE REPRESENTED BY THE APPLICANT CRAFT UNION, BECAUSE OF THE RECOGNIZED CRAFT STATUS OF STATIONARY ENGINEERS. THE APPLICANT CALLED AS A WITNESS ONE OF THE TWENTY STATIONARY ENGINEERS IN THE PROPOSED BARGAINING UNIT WHO TESTIFIED THAT HE WAS DISSATISFIED WITH THE REPRESENTATION GIVEN TO THE STATIONARY ENGINEERS BY THE INTERVENER AS BARGAINING AGENT.

THE BOARD FINDS THAT THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AND HAVE BEEN BARGAINED FOR BY THE INTERVENER SINCE 1947 AND HAVE BEEN PART OF AN OVERALL INDUSTRIAL UNIT SINCE 1943. THE BOARD FURTHER FINDS THAT UNDER THE COLLECTIVE AGREEMENT COVERING THE STATIONARY ENGINEERS A SEPARATE JOB CLASSIFICATION AND WAGE SCHEDULE FOR SECOND CLASS ENGINEERS HAS BEEN ARBITRATED AND AT THE PRESENT TIME A NEW JOB CLASSIFICATION AND WAGE SCHEDULE FOR THIRD AND FOURTH CLASS ENGINEERS IS BEING NEGOTIATED BY THE RESPONDENT AND INTERVENER. THE BOARD FURTHER FINDS THAT STATIONARY ENGINEERS HAVE ENJOYED SPECIAL WAGE INCREASES NEGOTIATED UNDER THE COLLECTIVE AGREEMENTS, HAVE ENJOYED THE BENEFITS OF PLANT WIDE SENIORITY AND AT LEAST TWELVE OF THE PRESENT STATIONARY ENGINEERS IN THE PROPOSED BARGAINING UNIT ORIGINALLY STARTED WITH THE RESPONDENT IN THE PRODUCTION SIDE OF THE RESPONDENT'S OPERATIONS. STATIONARY ENGINEERS HAVE EXERCISED THEIR SENIORITY AND HAVE PERFORMED OTHER THAN STATIONARY ENGINEERS WORK IN ORDER TO RETAIN EMPLOYMENT IN THE SUMMER TIME AND GENERALLY HAVE ENJOYED ALL THE BENEFITS PROVIDED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. IN ADDITION, STATIONARY ENGINEERS HAVE BEEN REPRESENTED BY THEIR OWN SHOP STEWARD AND A STATIONARY ENGINEER HAS BEEN A MEMBER OF THE CONSTITUTION COMMITTEE AND THE JOB CLASSIFICATION COMMITTEE UNDER THE COLLECTIVE AGREEMENT.

HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE LILY CUP CASE (ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, JANUARY 1961 p. 370) AND THE CANADA FOUNDRIES AND FORGINGS CASE (1961) CANADIAN LABOUR LAW REPORTER \$16,203, C.L.S. 76-735 AND THE Automatic Electric (Canada) Limited Case, Board File #1501-61-R AND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER AS EVIDENCED BY THE LENGTH OF CONTINUOUS REPRESENTATION BY THE INTERVENER OF THE STATIONARY ENGINEERS. THE SEPARATE WAGE SCHEDULES FOR STATIONARY ENGINEERS UNDER THE COLLECTIVE AGREEMENT, THE COMMUNITY OF INTEREST BETWEEN THE STATIONARY ENGINEERS AND THE PRODUCTION EMPLOYEES OF THE RESPONDENT ESPECIALLY WITH RESPECT TO PLANT WIDE SENIORITY PROVIDED FOR IN THE COLLECTIVE AGREEMENT, THE FACT THAT A STATIONARY ENGINEER HAS BEEN A SHOP STEWARD REPRESENTING STATIONARY ENGINEERS. AND THAT A STATIONARY ENGINEER HAS BEEN A MEMBER OF THE CONSTITUTION COMMITTEE AND THE JOB CLASSIFICA-TION COMMITTEE, AND ALSO THE OPPOSITION TO THE APPLICATION BY THE RESPONDENT AND THE INCUMBENT TRADE UNION, THE BOARD IS OF

OPINION THAT IT SHOULD EXERCISE ITS DISCRETION AND REFUSE TO APPLY SUBSECTION  $6\ (2)$  IN FAVOUR OF THE APPLICANT.

THE BOARD THEREFORE FINDS THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING IN THE CIRCUMSTANCES OF THIS CASE.

THE APPLICATION IS THEREFORE DISMISSED."

10651-65-R: United Packinghouse, Food and Allied Workers (Applicant) v. United Dairy and Poultry Co-operative Limited (Respondent).

IN THIS CASE THE BOARD FOUND THAT THREE UNITS WERE APPROPRIATE
AS FOLLOWS:-

- (1) ALL EMPLOYEES OF THE RESPONDENT AT TARA, PAISLEY AND CHESLEY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD; (41 EMPLOYEES IN THE UNIT)
- (2) ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND,
  SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK
  OF FOREMAN, OFFICE AND SALES STAFF, MILK BAR
  EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT
  MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED
  DURING THE SCHOOL VACATION PERIOD; (21 EMPLOYEES IN THE UNIT)
- (3) ALL EMPLOYEES OF THE RESPONDENT AT HANOVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. (11 EMPLOYEES IN THE UNIT).

THE APPLICATION WAS DISMISSED WITH RESPECT TO UNITS 2 AND 3, SINCE LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN EACH OF THESE UNITS WERE FOUND TO BE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

A CERTIFICATE WAS ISSUED TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT  $(1)_{ullet}$ 

### STATISTICAL TABLES FOR OCTOBER 1965

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed		
		Остовея 1 1965	lst 7 Months 1965-66	OF FISCAL YEAR.
1.	CERTIFICATION	83	591	537
11-	Declaration Terminating Bargaining Rights	5	35	56
111.	DECLARATION OF SUCCESSOR STATUS	-	5	3
[ V.	Declaration That Strike Unlawful	5	34	28
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	1	2	5
VI.	Consent to Prosecute	6	39	52
VII.	Complaint of Unfair Practice in Employment (Section 65)	6	71	106
VIII.	Miscellaneous	_2	_33	_14
	TOTAL	108	810	801

# TABLE II HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	OCTOBER	1st 7 Months OF	FISCAL YEAR.
	1965	1965-66	1964-65
HEARINGS AND CONTINUATION OF			
HEARINGS BY THE BOARD	93	724	662

TABLE III

# APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

		Number Disposed of		
			1st 7 Months	OF FISCAL YR.
١.	CERTIFICATION	82	599	498
11.	DECLARATION TERMINATING BARGAINING RIGHTS	, 8	<b>3</b> 8	60
111.	Declaration of Successor Status	-	9	6
1 V •	Declaration That Strike Unlawful	4	31	27
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	1	5
VI.	Consent to Prosecute	4	32 .	47
VII.	Complaint of Unfair Practice in Employment (Section 65)	6	71	108
VIII.	Miscellaneous	2	50	11
	TOTAL	106	831	762

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION

			R OF APPLI			R OF EMPLO	
		OCTOBER .		1964-65	1965	lsт 7 Мтнs 1965-66	1964-65
1.	CERTIFICATION				I		
	Granted Dismissed Withdrawn	65 10 7	442 104 53	365 86 47	1240 946 189	11433 4891 3088	12200 4469 2167
	TOTAL	82	<u>599</u>	498	2375	19412	18836
11.	TERMINATION OF BARGAINING RIGHTS						
	Granted Dismissed Withdrawn	4 4 -	17 19 2	39 19 2	118 151	1175 518 73	382 310 82
	TOTAL	8	38	60	269	1766	774

<sup>\*</sup>These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

		Numbe	R OF APPLI	CATIONS
				FISCAL YEAR.
III. Declaration That Strike Unlawful		,		
Granted Dismissed Withdrawn		<u></u>	6 3 22	11 4 12
	TOTAL	REMOTERS.	31	27
IV. DECLARATION THAT LOCKOU	<u>T</u>			
Granted Dismissed Withdrawn			1 	1 1 <u>3</u>
	TOTAL	-	1	<u>5</u>
V. Consent to Prosecute				
Granted Dismissed Withdrawn		1 - 3	6 4 22	7 10 <u>30</u>
	TOTAL	4	<u>32</u>	<u>47</u>

TABLE V

### REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

#### OF BY THE ONTARIO LABOUR RELATIONS BOARD

	Ni	IMBER OF VO	TES
		7 Months 1965-66	FISCAL YEAR 1964-65
CERTIFICATION AFTER VOTE*			
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	3 1 -	14 17	13 15 -
DISMISSED AFTER VOTE			
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	1 2 —	21 2	7 3 <sup>4</sup> <del>-</del>
TOTAL	7	<u>58</u>	69

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

#### TABLE VI

#### REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

#### BY THE ONTARIO LABOUR RELATIONS BOARD

			NUMBER OF VOTES			
						FISCAL YEAR 1964-65
*RESPONDENT			- 3		1	son.
RESPONDENT	TOTAL	Unsuccessfu	2		15	<u> </u>
	TOTAL	_	=		10	=

<sup>\*!</sup>N TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



## ONTARIO LABOUR RELATIONS BOARD



### CASE LISTINGS NOVEMBER 1965

			17.02
1.	CERTIFICATION		
J. *		AGENTS CERTIFIED	505
	(B) APPLICATION	NS DISMISSED	523
	(c) APPLICATIO	ns Withdrawn	528
2.		DECLARATION TERMINATING	4
	BARGAINING RIGHT	TS	529
3.	APPLICATIONS FOR	DECLARATION THAT	
) 。	STRIKE UNLAWFUL		531
	OTRIKE ONEAWI DE		7.7-
4.	APPLICATIONS FOR	CONSENT TO PROSECUTE	531
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	LABOUR PRACTICE	)	535
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0.	SECTION 79A	BOARD PURSUANT TO	539
	SECTION ()A		
7.	INDEXED ENDORSEME	NTS	
	CERTIFICATION		
	10502-65-R:		
		WINDSOR, ONTARIO	539
	10831-65-R:		542
	10841-65-R:	NEELON STEEL LIMITED	548
	SECTION 79A		
		LAWSON-McMullen-Victoria Limited	551
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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1965

#### BARGAINING AGENTS CERTIFIED DURING NOVEMBER

#### NO VOTE CONDUCTED

10437-65-R: Bakery & Confectionery Workers International Union of America, Local 457 (Applicant) v. Jackson's Bakeries Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SECURITY GUARDS, DRIVER-SALESMEN, GARAGE MECHANICS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (140 EMPLOYEES IN THE UNIT).

10451-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Canadian Canners Limited (Respondent) v. International Union of Operating Engineers (Intervener).

In this case the Board determined that two bargaining units were appropriate as follows:-

UNIT "A": "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT NUMBER 1 AT DRESDEN, SAVE AND EXCEPT ASSISTANT FOREMEN AND ASSISTANT FORELADIES, AND PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY STAFF, SEASONAL EMPLOYEES, SECURITY STAFF, NURSES, AND THOSE EMPLOYEES WHO ARE BOUND BY SUBSISTING COLLECTIVE AGREEMENTS." (220 EMPLOYEES IN THE UNIT).

Unit "B": "ALL SEASONAL EMPLOYEES OF THE RESPONDENT AT ITS PLANT NUMBER 1 AT DRESDEN, SAVE AND EXCEPT ASSISTANT FOREMEN AND ASSISTANT FORELADIES, AND PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND FORELADY, OFFICE AND SALES STAFF, NURSES, AND THOSE BOUND BY SUBSISTING COLLECTIVE AGREEMENTS." (169 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS AND AGREEMENTS OF THE PARTIES).

A CERTIFICATE WAS ISSUED TO THE APPLICANT WITH RESPECT TO UNIT "A".

THE BOARD PERMITTED THE APPLICANT TO WITHDRAW THE APPLICATION WITH RESPECT
TO UNIT "B".

10653-65-R: International Union of Operating Engineers, Local 772 (Applicant) v. The Watson Manufacturing Company Limited (Respondent).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT BRANTFORD." (3 EMPLOYEES IN THE UNIT).

10754-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. MOYER SAND (1965)
LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RIDGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (37 EMPLOYEES IN THE UNIT).

10794-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF SAULT STE. MARIE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MAINTENANCE SECTION AND STORES SECTION AT SAULT STE. MARIE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR." (4 EMPLOYEES IN THE UNIT).

10831-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Taplen Construction Limited (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM THE TOWNSHIP OF MARLBOROUGH) RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 542 ).

10863-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. K.D.S. COMMERCIAL ENTERPRISES LIMITED (APPLICANT).

Unit: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT, AT HAMILTON, SAVE AND EXCEPT THE CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10900-65-R: GARAGE EMPLOYEES LODGE No. 1120, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) v. MACK TRUCK MANUFACTURING COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

10928-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION NO. 721 (APPLICANT) v. PIGOTT CONSTRUCTION COMPANY LIMITED (RESPONDENT).

Unit: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "IRONWORKERS" INCLUDES RIGGERS, WELDERS, MACHINERY MOVERS, SASH AND DOOR ERECTORS AND ORNAMENTAL IRONWORKERS.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The respondent submits that a collective agreement, made and executed September 18, 1963, between itself, several international trade unions, including the International Association of Bridge, Structural and Ornamental Iron Workers, the parent union of the applicant trade union in this case, and a Council of Trade Unions composed of the said international trade unions, covers the employees affected by this application and, further, although the application is timely, the Board Should exercise its discretion under the provisions of Section 6(2) of the Labour Relations Act and refuse to find that the Proposed Bargaining unit of Ironworkers is an appropriate one.

The Question thus raised is not an easy one and the Board's position has not been helped by the failure of the International Association of Bridge, Structural and Ornamental Iron Workers (as distinguished from the applicant, Local 721 of that union) to appear and make representations although Duly served with notice of the application. The wording of the collective agreement in Question undoubtedly leaves much to be desired. Briefly stated, counsel for the respondent argues that, having regard to the provisions of the second recital clause, and, further, to Articles 1.05, 1.06 and 2.01 of the said agreement, it must be read as covering all employees of the respondent in the Province of Ontario engaged on construction projects and that bargaining rights for such employees are recognized by the parties to the agreement as being vested in the Council of Trade Unions.

THERE IS LITTLE DOUBT THAT SOME OF THE LANGUAGE IN THE PROVISIONS OF THE AGREEMENT REFERRED TO IS OPEN TO THE CONSTRUCTION PLACED THEREON BY COUNSEL. THUS, IN THE 2ND RECITAL CLAUSE THE RESPONDENT COMPANY "RECOGNIZES THE COUNCIL OF TRADE UNIONS AS THE EXCLUSIVE BARGAINING AGENT IN ONTARIO FOR ALL OF ITS EMPLOYEES ENGAGED ON CONSTRUCTION PROJECTS". AGAIN, IN ARTICLE 1.06, THE COUNCIL OF TRADE UNIONS"...UNDERTAKES TO ADMINISTER THIS COLLECTIVE AGREEMENT AND TO BARGAIN COLLECTIVELY FOR THE RENEWAL THEREOF ON BEHALF OF ALL EMPLOYEES OF THE EMPLOYER, AND ON BEHALF OF THOSE WHOM THE EMPLOYER CONTEMPLATES EMPLOYING IN SUCH CAPACITIES WITHIN THE SAID PROVINCE ..."

However, a close scrutiny of the Language of the agreement indicates that the construction suggested by counsel for the respondent may not have been intended by the parties. In the first place, one of the trade unions which is a party to the agreement is described as "International Association of Bridge, Structural and Ornamental Iron Workers (Rodmens Section)" in both appendix 1 and 3 of the agreement, which appendices list the trade unions which are parties to the agreement. Again, Article 13.01 provides that "In Appendix 2 the parties have set out those areas of the province in which working conditions have been established and settled between one or more of the unions named herein and recognized associations or groupings of employers in the construction industry". Appendix 2 lists a number of Ontario communities

IN A COLUMN ON THE LEFT-HAND SIDE OF THE PAGE AND THEN ACROSS THE TOP OF THE PAGE ARE LISTED SIX TRADES, NAMELY, LABOURERS, CARPENTERS, BRICKLAYERS, CEMENT MASONS, RODMEN AND OPERATING ENGINEERS. THESE TRADES, PRESUMABLY, CORRESPOND TO THE ORIGINAL SIX INTERNATIONAL UNIONS WHICH WERE PARTIES TO THE AGREEMENT AND WHICH, IN ADDITION, FORMED THE COUNCIL OF TRADE UNIONS, ALSO A PARTY TO THE AGREEMENT. IT WILL BE NOTED THAT THE TRADE CORRESPONDING TO THE PARTY DESCRIBED AS "INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (RODMENS SECTION)" IS RODMEN.

IT IS A WELL-KNOWN FACT IN THE FIELD OF LABOUR-MANAGEMENT RELATIONS THAT THE SAID INTERNATIONAL UNION IS SECTIONALIZED IN THAT IN ITS ORGANIZATION IT SEPARATES RODMEN AND IRONWORKERS, THE LATTER BEING THE SUBJECT OF THIS APPLICATION. IT IS ALSO A FACT THAT THE UNION, IN APPLYING TO THIS BOARD FOR CERTIFICATION, MAKES SEPARATE APPLICATIONS FOR RODMEN AND IRONWORKERS. FURTHER, THE USUAL PRACTICE OF THE UNION (AND THE SAME IS TRUE OF THE PRESENT APPLICANT) IS TO NEGOTIATE SEPARATELY FOR RODMEN AND IRONWORKERS. THUS, FOR EXAMPLE, COUNSEL FOR THE RESPONDENT ADMITTED THAT AT THE TIME THE PRESENT AGREEMENT WAS ENTERED INTO THE RESPONDENT, AS A MEMBER OF THE TORONTO CONSTRUCTION ASSOCIATION, WAS BOUND BY A RODMEN.

Now LET US RETURN TO THE LANGUAGE OF THE AGREEMENT. THE SECOND RECITAL AND ARTICLE 1.06 APPEAR TO SPEAK IN TERMS OF "ALL EMPLOYEES" WITHOUT QUALIFICATION. HOWEVER, IT IS CLEAR THAT THE PARTIES DID NOT IN FACT INTEND THE DECLARATION OF INTENT IN THE SECOND RECITAL TO BE TAKEN LITERALLY BECAUSE ARTICLE 2.01 PROVIDES IN ADDITION TO WHAT WAS SET OUT ABOVE THAT " EMPLOYEE " DOES NOT INCLUDE ANY NON-WORKING FOREMEN, THOSE ABOVE THAT RANK, THE OFFICE AND CLERICAL STAFF AND THE ENGINEERING STAFF". AGAIN, ARTICLE 1.06 IN OUR VIEW DOES IN FACT CONTAIN A QUALIFICATION IN THE WORDS "ACCEPTS THE DELEGATION OF AUTHORITY HEREINBEFORE SET OUT ... (EMPHASIS ADDED). THIS CAN ONLY REFER TO ARTICLE 1.05 WHICH, IN OUR VIEW, DOES NOT SPEAK IN TERMS OF AN ALL EMPLOYEE UNIT. THUS IT PROVIDES IN PART THAT EACH OF THE TRADE UNIONS "COVENANTS AND AGREES TO DELEGATE TO THE COUNCIL OF TRADE UNIONS ... COMPLETE AND FINAL AUTHORITY TO BARGAIN WITH THE EMPLOYER ON BEHALF OF THE SAID UNION AND THE EMPLOYEES IT REPRESENTS ... ". (EMPHASIS ADDED). CERTAINLY THE 6 TRADE UNIONS WOULD NOT REPRESENT ALL THE TRADES WHICH THE RESPONDENT MIGHT HIRE, FOR EXAMPLE, PLUMBERS OR ELECTRICIANS, AND NO DOUBT THIS WAS THE REASON FOR THE INCLUSION OF ARTICLE 1.04 IN THE SAID AGREEMENT. THAT ARTICLE PROVIDES AS FOLLOWS:

"1.04 SHOULD IT BECOME APPROPRIATE FOR ANY GROUP OF EMPLOYEES OF THE EMPLOYER TO BE REPRESENTED BY, OR TO BECOME MEMBERS OF, A UNION OTHER THAN ONE OF THE UNIONS NAMED IN APPENDIX 1, THEN SUCH ADDITIONAL UNION MAY APPOINT A REPRESENTATIVE AND BECOME A MEMBER OF AND PARTICIPATE IN THE ACTIVITIES OF THE

COUNCIL IF THE EXISTING MEMBERS OF THE COUNCIL AGREE TO ACCEPT SUCH NEW MEMBER."

AGAIN, IN ARTICLE 2.01 (SUPRA), WHICH IS HEADED "RECOGNITION", THE WORDS "ALL EMPLOYEES" ARE QUALIFIED BY THE WORDS "FOR WHOM THE COUNCIL IS AUTHORIZED TO BARGAIN...". FOR WHOM WAS THE COUNCIL AUTHORIZED TO BARGAIN? ARTICLE 1.05 MAKES IT CLEAR THAT IT IS ONLY THE NAMED UNIONS AND THE EMPLOYEES THEY REPRESENT. WHAT EMPLOYEES WAS IT INTENDED THAT THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS SHOULD REPRESENT UNDER THE TERMS OF THIS COLLECTIVE AGREEMENT? THERE IS NO QUESTION THAT, SPEAKING GENERALLY, THIS UNION REPRESENTS BOTH RODMEN AND IRONWORKERS. HOWEVER WHEN THE BARGAINING PRACTICES OF THE UNION ARE CONSIDERED ALONG WITH THE WORDING IN APPENDIX 2 AND WITH THE WAY THE UNION IS DESCRIBED IN APPENDICES 1 AND 3. WE ARE SATISFIED THAT IT WAS INTENDED THAT THE SAID UNION SHOULD REPRESENT ONLY RODMEN IN THE AGREEMENT UNDER CONSIDERATION. CONSEQUENTLY, IT WAS ONLY RODMEN, AND NOT IRONWORKERS, FOR WHOM THE COUNCIL OF TRADE Unions was authorized to Bargain. It follows, Therefore, THAT THE RESPONDENT. IN ARTICLE 2.01 DID NOT RECOGNIZE THE COUNCIL OF TRADE UNIONS AS THE EXCLUSIVE BARGAINING AGENT FOR IRONWORKERS. IN THE RESULT, WE FIND THAT THE SAID COLLECTIVE AGREEMENT IS NOT A BAR TO THE PRESENT APPLICATION."

10938-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ROLLINS LUMBER LIMITED (RESPONDENT).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, GRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BARGAINING UNIT, AS SET OUT ABOVE, DOES NOT INCLUDE CARPENTERS WORKING IN THE FACTORY OPERATED BY THE RESPONDENT AT FOXBOROUGH.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"AT THE HEARING THE APPLICANT INFORMED THE BOARD THAT ALTHOUGH IT HAD ORIGINIALLY INCLUDED ONE HAROLD MORRIS IN THE BARGAINING UNIT IT WAS NOW TAKING THE POSITION THAT MORRIS WAS ONLY A LABOURER. THE RESPONDENT, ON THE LIST OF EMPLOYEES FILED WITH ITS REPLY, DESCRIBED MORRIS AS A CARPENTERS' HELPER BUT TOOK THE POSITION BEFORE THE BOARD AT THE HEARING THAT IN REALITY HE DID THE SAME WORK AS THE OTHER PERSONS IN THE BARGAINING UNIT. MORRIS, HIMSELF, TESTIFIED THAT HE DID JUST AS MUCH CARPENTER'S WORK AS THE OTHER PERSONS INCLUDED IN THE BARGAINING UNIT. AT THIS TIME THE BOARD DOES NOT DEEM IT NECESSARY TO MAKE A FINDING WITH RESPECT TO WHETHER MORRIS IS OR IS NOT INCLUDED IN THE BARGAINING UNIT. IF THE PARTIES ARE UNABLE TO AGREE ON THIS QUESTION IT IS OPEN TO EITHER OF THEM

TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT.

IN THIS CASE A PETITION, OBJECTING TO THE APPLICATION, WAS FILED, SIGNED BY THREE OF THE FIVE PERSONS FOR WHOM THE APPLICANT UNION SUBMITTED EVIDENCE OF MEMBERSHIP. THE APPLICANT FILED CHARGES ALLEGING THAT THE PETITION AROSE AS A RESULT OF THREATS MAD: BY A FOREMAN OF THE RESPONDENT. THE BOARD HEARD EVIDENCE FROM AN EMPLOYEE, ONE MORRIS, RESPECTING THE ORIGINATION OF THE DOCUMENT AND THE MANNER IN WHICH THE SIGNATURES ON IT WERE OBTAINED. THE FOREMAN IN QUESTION, ONE HARTWIG, ALSO GAVE EVIDENCE. MR. MORRIS, AN EMPLOYEE OF FIVE YEARS' STANDING WITH THE RESPONDENT, OBVIOUSLY FELT THAT HE WAS TREADING DANGEROUS WATERS WHEN GIVING HIS EVIDENCE AND IN OUR OPINION IT TOOK CONSIDERABLE COURAGE ON HIS PART TO GIVE THE TESTIMONY HE DID RESPECTING THE ALLEGATIONS OF THE APPLICANT. WE DEEM IT EXPEDIENT TO CALL SECTION 59A OF THE LABOUR RELATIONS ACT TO THE ATTENTION OF THE PARTIES.

REGARDLESS OF WHETHER MORRIS'S VERSION OR HARTWIG'S VERSION OF WHAT THE LATTER SAID TO THE THREE EMPLOYEES IS ACCEPTED. IT IS CLEAR FROM WHAT WAS SAID BY HARTWIG THAT THE EMPLOYEES WOULD UNDERSTAND THAT THEIR JOBS MIGHT WELL BE IN JEOPARDY IF THE APPLICANT WAS CERTIFIED AS THEIR BARGAINING AGENT. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE OTHER EVIDENCE BEFORE US WE ARE NOT SATISFIED THAT THE PETITION REFLECTS THE FREE AND VOLUNTARY WISHES OF THE EMPLOYEES UNINFLUENCED BY ANY INTERFERENCE, SUPPORT OR ASSISTANCE ON THE PART PART OF THE MANAGEMENT. (SEE BULK-LIFT SYSTEMS CASE, O.L.R.B. MONTHLY REPORT, MARCH 1961, p. 431; FLECK MANUFACTURING LIMITED CASE, (1962), 62 C.L.L.C., 916,236, C.L.S. 76-903.) IN THE RESULT, THEREFORE, WE ARE UNABLE TO FIND THAT THE PETITION WEAKENS THE APPLICANT UNION'S EVIDENCE OF MEMBERSHIP SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE."

10946-65-R: International Association of Machinists (Applicant) v. Fairbanks Morse (Canada) Ltd. (Respondent).

Unit: "ALL EMPLOYEES OF THE SCALE SERVICE DEPARTMENT OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

10955-65-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (APPLICANT) v. ATLAS TAG COMPANY OF CANADA LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

10957-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROFESSIONAL TEACHING STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL UNION #190 AND THE RESPONDENT." (41 EMPLOYEES IN THE UNIT).

10958-65-R: International Union, United Plant Guard Workers of America, Amalgamated Plant Guards, Local 1958 (Applicant) v. Dow Chemical of Canada, Limited (Respondent).

UNIT: "ALL PLANT GUARDS IN THE EMPLOY OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT SHIFT SERGEANTS, AND PERSONS ABOVE THE RANK OF SHIFT SERGEANT, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10965-65-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 880 (Applicant) v. Sarnia Lumber and Builders Supply Limited (Respondent) v. United Brotherhood of Carpenters & Joiners of America Local 3054 (Intervener).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10969-65-R: Shopmen's Local Union No. 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated AFL, CIO, CLC) (Applicant) v. Cameron Windows (Aluminum) Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL UNION No. 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, EFFECTIVE MAY 1ST, 1965." (95 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10972-65-R: United Brotherhood of Carpenters and Joiners of America Local Union #397 (Applicant) v. W. A. Stephenson & Sons Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10974-65-R: AMALGAMATED SILVER WORKERS UNION, LOCAL 44, INTERNATIONAL JEWELRY WORKERS! UNION (APPLICANT) v. AVON JEWELLERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, DESIGNERS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

10979-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 493 (APPLICANT) v. CARTER CONSTRUCTION CO. LTD. (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

THE AREA PROPOSED BY THE APPLICANT IS NOT ONE WHICH THE BOARD IS PREPARED TO GRANT AT THIS TIME. AS AN INTERIM MEASURE THE BOARD FOUND THE AREA SET OUT ABOVE TO BE APPROPRIATE.

10980-65-R: United Steelworkers of America (Applicant) v. Canadian Heat Treaters Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL, SAVE AND EXCEPT TURN FOREMEN, PERSONS ABOVE THE RANK OF TURN FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE (HEREINAFTER REFERRED TO AS THE PETITION) EXPRESSING OPPOSITION TO THIS APPLICATION. THE PETITION WAS SENT TO THE REGISTRAR BY REGISTERED MAIL ON OCTOBER 29TH, 1965, THE TERMINAL DATE FOR THIS APPLICATION. THE PETITION, HOWEVER, FAILED TO NAME THE RESPONDENT AS THE EMPLOYER CONCERNED. THE REGISTRAR BY LETTER DATED NOVEMBER 1ST, ADVISED ROBERT APPLETON, WHOSE RETURN ADDRESS APPEARS ON THE ENVELOPE IN WHICH THE PETITION WAS MAILED, THAT NO ACTION WOULD BE TAKEN WITH REGARD TO THE PETITION UNLESS HE PROVIDED THE NAME OF THE EMPLOYER IN QUESTION. APPLETON APPEARED AT THE BOARD HEARING ON NOVEMBER 8TH AND INFORMED THE BOARD THAT UPON RECEIVING THE REGISTRAR'S LETTER OF NOVEMBER 1ST, HE REPLIED BY LETTER SENT BY ORDINARY MAIL SUPPLYING THE REGISTRAR WITH THE NAME OF THE RESPONDENT. THE BOARD HAS NO RECORD OF HAVING RECEIVED ANY SUCH WRITTEN COMMUNICATION FROM APPLETON. THE BOARD INVITED THE REPRESENTATIONS OF THE PARTIES AT THE NOVEMBER 8TH HEARING AS TO WHETHER IN THE ABOVE CIRCUMSTANCES THE BOARD SHOULD ENTERTAIN THE PETITION.

LET US ASSUME FOR THE PURPOSE OF ARGUMENT ONLY THAT THE BOARD DID ENTERTAIN THE PETITION. EVEN IF THE BOARD GAVE WEIGHT TO THE PETITION, THAT IS, EVEN IF DOUBT WAS CAST ON THE EVIDENCE OF MEMBERSHIP FOR THOSE PERSONS WHOSE NAMES APPEAR ON THE PETITION WHO ARE ALSO CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION, THE APPLICANT STILL HAS UNDISPUTED EVIDENCE OF MEMBERSHIP FOR A SUFFICIENT NUMBER OF PERSONS IN THE BARGAINING UNIT TO ENTITLE IT TO OUTRIGHT CERTIFICATION. ACCORDINGLY, THE BOARD WOULD NOT MAKE ANY INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION SINCE IT COULD NOT AFFECT THE MEMBERSHIP POSITION OF THE APPLICANT. THEREFORE, IN THE CIRCUMSTANCES OF THE INSTANT CASE, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION AS TO THE TIMELINESS OF THE PETITION."

10982-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Carter Construction Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

THE AREA PROPOSED BY THE APPLICANT IS NOT ONE WHICH THE BOARD IS PREPARED TO GRANT AT THIS TIME. AS AN INTERIM MEASURE THE BOARD FOUND THE AREA SET OUT ABOVE TO BE APPROPRIATE.

10984-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Pitts Quebec Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

10985-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Frid Construction Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

THE AREA PROPOSED BY THE APPLICANT IS NOT ONE WHICH THE BOARD IS PREPARED TO GRANT AT THIS TIME. AS AN INTERIM MEASURE THE BOARD FOUND THE AREA SET OUT ABOVE TO BE APPROPRIATE.

10986-65-R: United Brotherhood of Carpenters & Joiners of America Local Union #1450 (Applicant) v. Mortlock Construction (1963) Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

10987-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. CORNWALL STORAGE AND WAREHOUSING LIMITED (RESPONDENT).

Unit: "ALL WAREHOUSE EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND WATCHMEN." (15 EMPLOYEES IN THE UNIT).

10988-65-R: Hotel and Restaurant Employees Union Local 743, Affiliated with: Hotel and Restaurant Employees and Bartenders International Union; AFL-CIO; C.L.C. and Windsor and District Labour Council (Applicant) v. Trior Investments Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BALI-HI MOTOR HOTEL AT WINDSOR, SAVE AND EXCEPT MANAGER, ASSISTANT MANAGER, HOSTESS, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (20 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10989-65-R: SHEET METAL WORKERS! INTERNATIONAL ASSOCIATION, LOCAL UNION 330 (APPLICANT) v. WINDSOR STEEL FABRICATORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

10993-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS! UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. THE CORPORATION OF THE TOWN OF CHELMSFORD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHELMSFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10997-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL:CIO:CLC (APPLICANT) v. BENNETT & WRIGHT LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(50 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THERE WAS SUBMITTED IN OPPOSITION TO THIS APPLICATION A
"PETITION" CONSISTING OF THREE SHEETS OF PAPER BEARING THE SIGNATURES
AND ADDRESSES OF CERTAIN EMPLOYEES OF THE RESPONDENT TOGETHER WITH
A HANDWRITTEN STATEMENT OF DESIRE ON A SEPARATE SHEET OF PAPER
INDICATING OPPOSITION TO THE APPLICATION. THE EVIDENCE ESTABLISHES
THAT AT THE TIME THE EMPLOYEES SIGNED THE SHEETS OF PAPER THE
STATEMENT OF DESIRE HAD NOT BEEN PREPARED. THERE IS NOTHING ON
ANY OF THE SHEETS CONTAINING SIGNATURES AND THERE WAS NOTHING BEFORE
ANY OF THE SIGNATORIES AT THE TIME THE SHEETS OF PAPER WERE SIGNED

TO INDICATE THE INTENTION OR PURPOSE OF THE SIGNATORIES IN SIGNING THEM. THIS SITUATION IS ANALOGOUS TO THAT WHICH OBTAINED IN THE N.D. APPLEGATE LIMITED CASE, O.L.R.B. MONTHLY REPORT, May 1963, P. 104. IN THAT CASE, THE "PETITION" CONSISTED OF A SINGLE PAGE OF PAPER CONTAINING A HANDWRITTEN PREAMBLE UNDER WHICH WERE AFFIXED BY GLUE INDIVIDUAL SLIPS OF PAPER EACH BEARING THE SIGNATURE OF AN EMPLOYEE, THE DATE, AND THE SIGNATURE OF A WITNESS. THE EVIDENCE THERE ESTABLISHED THAT THE PREAMBLE WAS WRITTEN AND THE INDIVIDUAL SLIPS OF PAPER GLUED TO THE PAGE AFTER THE SLIPS OF PAPER HAD BEEN SIGNED BY EMPLOYEES. AT THE TIME THE SIGNATURES WERE AFFIXED TO THE SLIPS OF PAPER THERE WAS NOTHING TO INDICATE THE INTENTION OR PURPOSE OF THE SIGNATORIES IN SIGNING THEM OR THAT THEY WERE INTENDED TO BE PART OF THE DOCUMENT TO WHICH THEY WERE LATER ATTACHED. IN THE RESULT, THE BOARD IN THE APPLEGATE CASE DID NOT CONSIDER THE EVIDENCE OF OPPOSITION TO THE APPLICATION SUFFICIENT TO WEAKEN THE EVIDENCE OF MEMBERSHIP WHICH HAD BEEN SUBMITTED BY THE TRADE UNION.

WHILE THE FOREGOING IS, IN OUR OPINION, SUFFICIENT TO DISPOSE OF THE OBJECTION TO THE PRESENT APPLICATION, IT MAY FURTHER BE NOTED THAT THE ORAL EVIDENCE HEARD BY THE BOARD WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE "PETITION", IN THE INSTANT CASE, TENDS TO ESTABLISH NOT OPPOSITION TO THE TRADE UNION AS SUCH AND NOT RENUNCIATION OF UNION MEMBERSHIP ON THE PART OF THOSE WHO HAD SIGNED UNION CARDS AND LATER SIGNED THE "PETITION", BUT RATHER SIMPLY THE FEELING OF THE SIGNATORIES THAT A REPRESENTATION VOTE WOULD BE DESIRABLE.

IN ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE OF THE OPINION THAT THE EVIDENCE ADDUCED AS INDICATING OPPOSITION TO THE APPLICATION IS NOT SUFFICIENT TO WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT."

11004-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 1036 (Applicant) v. Alex's Plumbing and Heating Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT SAINTE MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11005-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 1036 (Applicant) v. J. D. Esson Plumbing & Heating Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT SAINTE MARIE AND IN THE TOWNSHIPS OF PRINCE, KORAH AND TARENTOROUS AND IN THE UNORGANIZED TOWNSHIPS OF PARKE, AND AWENGE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11006-65-R: United Steelworkers of America (Applicant) v. Canada Talc Industries Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MADOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

11007-65-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 721 (Applicant) v. Macotta Co. of Canada Ltd. (Respondent).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11044-65-R: Hotel & Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria & Tavern Employees Union, Local 254 (Applicant) v. Canterbury Foods Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE CITY HALL, TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR TWENTY-FOUR (24) HOURS OR LESS PER WEEK, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11045-65-R: International Hod Carriers Building and Common Labourers Union, Local 1036 (Applicant) v. S. Sikorski Construction Limited (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE-MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

THE PARTIES ARE IN AGREEMENT THAT THE TOWNSHIPS OF KORAH AND TARENTOROUS HAVE BEEN AMALGAMATED WITH THE CITY OF SAULT STE. MARIE AND THAT THE TOWNSHIPS OF PARKE AND AWENGE WERE PREVIOUSLY AMALGAMATED BY THE TOWNSHIP OF KORAH. IN THESE CIRCUMSTANCES THE BOARD HAS DECIDED TO AMEND ITS GEOGRAPHIC AREA NUMBER TWENTY-ONE TO READ AS ABOVE.

11051-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. LOCAL UNION 6500, UNITED STEELWORKERS OF AMERICA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

11053-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. Force Construction Co. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

11054-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. CANADIAN CONTROLLERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."
(143 EMPLOYEES IN THE UNIT).

11056-65-R: SHEET METAL WORKERS! INTERNATIONAL ASSOCIATION, LOCAL UNION 304 (APPLICANT) v. CANADIAN BAKER PERKINS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

11057-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TRU-CRANE & EQUIPMENT RENTALS (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11058-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INTERNATIONAL FORMED TUBES LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

11059-65-R: United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Firestone Tire & Rubber Company of Canada Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS INDUSTRIAL PRODUCTS DIVISION AT LINDSAY, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISORS AND FOREMAN, OFFICE AND SALES STAFF, LABORATORY AND DEVELOPMENT EMPLOYEES, NURSE,

SECURITY GUARDS AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED NOVEMBER 22ND, 1965, WHEREIN THE INTERVENER WAS CERTIFIED AS BARGAINING AGENT FOR STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT."

(196 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT RECENTLY COMMENCED OPERATIONS AT ITS PLANT AT LINDSAY AND WAS NOT ON NOVEMBER 22ND, 1965, THE DATE OF THE HEARING IN THIS MATTER, IN FULL OPERATION. AS OF THE DATE OF THE HEARING THE RESPONDENT HAD NOT HAD AN OPPORTUNITY TO EMPLOY STUDENTS DURING THE SCHOOL VACATION PERIOD ALTHOUGH IT INTENDS TO DO SO NEXT SUMMER.

HAVING REGARD TO THE HISTORY OF COLLECTIVE BARGAINING IN OTHER PLANTS OPERATED BY THE RESPONDENT, IN WHICH STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE EXCLUDED FROM THE MAIN BARGAINING UNIT, FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE NOT INCLUDED IN THE BARGAINING UNIT IN THIS MATTER."

11061-65-R: United Brotherhood of Carpenteres & Joiners of America Local Union 93 (Applicant) v. O. J. Gaffney Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

11066-65-R: International Brotherhood of Electrical Workers Local Union 1687 (Applicant) v. K. Melhorn Electrical Construction (Respondent).

Unit: "ALL ELECTRICIANS AND ELECTRICIANS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

11068-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. ABITIBI POWER & PAPER COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE HOTEL IROQUOIS, IROQUOIS FALLS, SAVE AND EXCEPT HOTEL MANAGER AND THOSE ABOVE THE RANK OF HOTEL MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (20 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

11069-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. ANSON GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE ANSON GENERAL HOSPITAL, IROQUOIS FALLS, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11070-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. STEWART HARTSHORN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (65 EMPLOYEES IN THE UNIT).

11074-65-R: International Hod Carriers Building and Common Labourers Union, Local # 1036 (Applicant) v. R. Jolicoeur & Sons Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND IN THE TOWNSHIP OF PRINCE AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11078-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Besner Brothers Construction Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD HAS NOT YET FINALIZED AN APPROPRIATE GEOGRAPHIC AREA WHICH WOULD INCLUDE KAPUSKASING. IN THESE CIRCUMSTANCES THE BOARD GRANTED THE AREA SET OUT ABOVE.

11080-65-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. H. KLOMPS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

11083-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. MATERIAL HANDLING ERECTION CO. LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11086-65-R: International Hod Carriers' Building and Common Labourers' Union of America Local Union No. 597 (Applicant) v. W. A. Stephenson & Sons Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

11114-65-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) v. H. S. THOMSON & SON LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10841-65-R: United Steelworkers of America (Applicant) v. Neelon Steel Limited (Respondent) v. The Sudbury and District General Workers! Union Local 902 of the International Union of Mine, Mill and Smelter Workers (Intervener).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, OUTSIDE SALESMEN AND WATCHMEN." (32 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of Names on Revised Voters' List 31

Number of Ballots Cast 31

Number of Ballots Marked in Favour 29

Number of Ballots Marked in Favour 29

OF INTERVENER 2

(SEE INDEXED ENDORSEMENT PAGE 548).

#### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10365-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. I. WAXMAN & COMPANY (RESPONDENT).

- AND -

10432-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. I. WAXMAN & COMPANY (RESPONDENT).

- AND -

10433-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. I. WAXMAN & COMPANY (RESPONDENT).

#### (THE ABOVE APPLICATIONS ARE CONSOLIDATED)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (54 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS	LIST	60
NUMBER OF BALLOTS SEGREGATED AND		
NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	34	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	25	

10502-65-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 210 (APPLICANT) v. THE SALVATION ARMY GRACE HOSPITAL, WINDSOR, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT WINDSOR, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (48 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM"TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

NUMBER OF NAMES ON REVISED VOTERS! LIST	18
NUMBER OF BALLOTS CAST	14
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

10557-65-R: United Steelworkers of America (Applicant) v. Earl's Welding Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, DRAUGHTSMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

10852-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. CURVPLY WOOD PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORONO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST	72
NUMBER OF BALLOTS CAST	72
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	37
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	35

10934-65-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 880 (Applicant) v. The Marra's Bread Limited, Division of General Bakeries Limited (Respondent) v. District 50, United Mine Workers of America, Local Union 14134 (Intervener).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS AMHERSTBURG DIVISION AT AMHERSTBURG, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (72 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

									mo
NUMBER O	F	NAMES ON	REVISE	D V	OTERS	LIST			70
NUMBER O	F	BALLOTS	CAST					69 .	
NUMBER O	F	SPOILED	BALLOTS				1		
NUMBER O	F	BALLOTS	MARKED	IN	FAVOUR				
OF APPL	_ I C	ANT					66		
NUMBER C	)F	BALLOTS	MARKED	1 N	FAVOUR				
OF INTE	RV	ENER					2		

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

No VOTE CONDUCTED

10770-65-R: United Steelworkers of America (Applicant) v. Falconbridge Nickel Mines Limited (Respondent) v. Sudbury Mine Mill & Smelter Workers Union Local 598 Affiliated with The International Union of Mine, Mill & Smelter Workers (Intervener). (2369 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE APPROPRIATE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, NO MATTER WHETHER STUDENTS WERE OR WERE NOT INCLUDED IN THAT BARGAINING UNIT, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

10975-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. TORONTO TERMINAL WAREHOUSE AND CARTAGE LIMITED (RESPONDENT) v. BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, AND PERSONS ABOVE THE RANK OF FOREMAN." (102 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER/CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION ACCORDINGLY IS DISMISSED."

10976-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. Terminal Warehouse Limited (Respondent) v. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (Intervener).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (102 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION ACCORDINGLY IS DISMISSED."

11050-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE COUNTY OF HASTINGS (RESPONDENT). (15 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT THE RESPONDENT IS A MUNICIPALITY AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT AND THAT IT HAS DECLARED PURSUANT TO THE PROVISIONS OF SECTION 89 OF THE LABOUR RELATIONS ACT THAT THE LABOUR RELATIONS ACT SHALL NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM.

IN VIEW OF THE ACTION OF THE RESPONDENT IN MAKING SUCH A DECLARATION THE BOARD HAS NO JURISDICTION TO PROCESS THIS APPLICATION FURTHER AND THE APPLICATION IS ACCORDINGLY TERMINATED."

11060-65-R: THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 412 A.F. OF L. -C.I.O. -C.L.C. (APPLICANT) v. THE ALGONQUIN HOTEL SAULT LIMITED (RESPONDENT). (17 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"NO ONE APPEARING FOR THE APPLICANT, NO ONE APPEARING FOR THE RESPONDENT.

NO ONE APPEARING FOR THE APPLICANT AT THE HEARING, THIS APPLICATION IS DISMISSED."

11082-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. THE WORKMEN'S COMPENSATION BOARD ONTARIO HOSPITAL AND REHABILITATION CENTRE (RESPONDENT). (9 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS APPLIED FOR CERTIFICATION AS BARGAIN-ING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT IN WHAT IT DESCRIBED AS "ITS PLANT AT 115 TORBARRIE ROAD, DOWNSVIEW".

IN A PREVIOUS APPLICATION FOR CERTIFICATION MADE BY THE NATIONAL UNION OF PUBLIC EMPLOYEES AFFECTING THE SAME RESPONDENT (SEE O.L.R.B. MONTHLY REPORT, MARCH 1960, p. 419), THE BOARD, IN DISMISSING THE APPLICATION HELD:

... THAT THE RESPONDENT IS AN EMANATION OF THE CROWN IN THE RIGHT OF THE PROVINCE OF ONTARIO AND ... THE LABOUR RELATIONS ACT DOES NOT APPLY TO IT.

THESE TWO APPLICATIONS WERE CONSOLIDATED AND THE TAKING OF A REPRESENTATION VOTE WAS DIRECTED. THE RESULT OF THE VOTE IS AS FOLLOWS:-

NUMBER OF NAMES ON REVISED VOTERS! LIST		438
NUMBER OF BALLOTS CAST		403
NUMBER OF SPOILED BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
GENERAL TRUCK DRIVERS, UNION, LOCAL 879	210	
NUMBER OF BALLOTS MARKED IN FAVOUR OF		
INTERNATIONAL ASSOCIATION OF MACHINISTS	186	

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOLLOWING THE TAKING OF THE VOTE, GENERAL TRUCK DRIVERS UNION, LOCAL 879, FILED A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IN WHICH IT SUBMITTED, FOR REASONS SET OUT IN THE STATEMENT, THAT (A) GENERAL TRUCK DRIVERS UNION, LOCAL 879, SHOULD BE CERTIFIED AS THE BARGAINING AGENT FOR THE EMPLOYEES CONCERNED, (B) IN THE ALTERNATIVE, THE REPRESENTATION VOTE SHOULD BE SET ASIDE AND A NEW VOTE DIRECTED, OR (C) IN THE FURTHER ALTERNATIVE, THE BOARD SHOULD SPECIFICALLY REFUSE TO IMPOSE ANY BAR WHICH WOULD PREVENT THE GENERAL TRUCK DRIVERS UNION, LOCAL 879, FROM REAPPLYING AT ANY TIME FOR CERTIFICATION OF THE EMPLOYEES CONCERNED.

AT THE HEARING, COUNSEL FOR GENERAL TRUCK DRIVERS UNION. LOCAL 879, STATED THAT HE DID NOT PROPOSE TO LEAD EVIDENCE WITH RESPECT TO ANY OF THE ALLEGATIONS CONTAINED IN THAT UNION S STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS. How-EVER, HE MADE REPRESENTATIONS TO THE BOARD THAT THE BOARD SHOULD DIRECT A "RUN-OFF" REPRESENTATION VOTE IN WHICH THE VOTERS WOULD BE ASKED TO INDICATE WHETHER THEY WISHED TO BARGAIN THROUGH GENERAL TRUCK DRIVERS UNION, LOCAL 879. IN THE ALTERNATIVE, HE REQUESTED THAT IN THIS CASE THE BOARD SHOULD NOT FOLLOW ITS USUAL PRACTICE OF IMPOSING A SIX MONTHS BAR ON AN UNSUCCESSFUL UNION FOLLOWING THE TAKING OF A REPRESENTATION VOTE. IN SUPPORT OF HIS SUBMISSIONS CONCERNING THE RUN-OFF VOTE, COUNSEL FOR THE TRUCK DRIVERS UNION, LOCAL 879, RELIED ON THE REASONING OF A PREDECESSOR BOARD IN THE WRIGHT-HARGREAVES CASE, (1944) D.L.S. 7-1156 AND IN THE BORDEN COMPANY CASE, (1946) D.L.S. 7-1231. IN SUPPORT OF HIS SUBMISSION THAT NO BAR SHOULD BE IMPOSED, COUNSEL POINTED OUT THAT, SINCE SOME 90% OF THE EMPLOYEES HAD EXPRESSED A DESIRE IN THE REPRE-SENTATION VOTE TO BE REPRESENTED BY A UNION, IT WAS INEQUITABLE TO DENY THEM THE OPPORTUNITY TO BE SO REPRESENTED FOR A PERIOD OF SIX MONTHS.

THE DECISIONS THAT COUNSEL REFERRED TO WERE MADE AT A TIME WHEN THE BOARD WAS ADMINISTERING THE WARTIME LABOUR RELATIONS REGULATIONS, COMMONLY KNOWN AS "P.C. 1003". THE BOARD HAS HAD OCCASION TO DEAL WITH BOTH OF THE SUBMISSIONS MADE BY COUNSEL FOR THE GENERAL TRUCK DRIVERS UNION, LOCAL 879, UNDER THE LEGISLATION PRESENTLY IN EFFECT. AS TO THE FIRST SUBMISSION, THE BOARD, IN THE CANADIAN WESTINGHOUSE CASE, O.L.R.B. MONTHLY REPORT, MARCH

1958, P. 25, REFERRED TO ITS "INABILITY TO FIND IN THE LEGISLATION ANY AUTHORITY FOR DROPPING FROM THE BALLOT THE UNION WHICH RECEIVED THE LEAST NUMBER OF VOTES IN THE REPRESENTATION VOTE PREVIOUSLY TAKEN". THIS POSITION WAS AFFIRMED IN THE NORTHERN ELECTRIC COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1959, P. 178. NOTHING THAT COUNSEL HAS SAID IN THE INSTANT CASE HAS LED US TO ALTER THE CONCLUSION SET OUT IN THOSE CASES. THE REQUEST FOR A RUN-OFF VOTE IS THEREFORE DENIED.

THE BOARD FINDS THAT, ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN THIS MATTER, NOT MORE THAN 50% OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF EITHER GENERAL TRUCK DRIVERS UNION, LOCAL 879 OR THE INTERNATIONAL ASSOCIATION OF MACHINISTS. BOTH APPLICATIONS ARE THEREFORE DISMISSED.

THE REQUEST OF COUNSEL FOR THE GENERAL TRUCK DRIVERS
UNION THAT NO BAR BE IMPOSED IS DENIED. THE SITUATION IN THIS
CASE DOES NOT DIFFER IN ANY MATERIAL RESPECT FROM THAT IN MANY
OTHER CASES THAT HAVE COME BEFORE THE BOARD. THE BOARD WILL NOT
ENTERTAIN AN APPLICATION FOR CERTIFICATION BY EITHER THE GENERAL
TRUCK DRIVERS UNION, LOCAL 879, OR BY THE INTERNATIONAL ASSOCIA—
TION OF MACHINISTS WITH RESPECT TO ANY OF THE EMPLOYEES OF THE
RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS
FROM THE DATE HEREOF."

BOARD MEMBER G. RUSSELL HARVEY ADDED:

"ALTHOUGH | CONCUR IN THE CONCLUSION OF THE MAJORITY, IT SEEMS TO ME THAT THE REASONING OF THIS BOARD IN THE WRIGHT-HARGREAVES CASE IS UNASSAILABLE. | WOULD HAVE APPLIED THAT REASONING IN THIS CASE AND WOULD HAVE DIRECTED A RUN-OFF VOTE IF | HAD NOT BEEN BARRED FROM DOING SO BY THE LANGUAGE OF THE ACT AS IT STANDS AT PRESENT. IN THE CASE REFERRED TO, THE BOARD SAID:

"...IF WE WERE TO DISMISS BOTH PETITIONS IN THIS CASE, WE WOULD BE IGNORING THE HIGHLY SIGNIFICANT FACT THAT BETWEEN 85% AND 88% OF THE EMPLOYEES IN THIS ENTERPRISE EXPRESSED A DESIRE TO BARGAIN COLLECTIVELY WITH THE EMPLOYER. WHEN CON-FRONTED WITH A CHOICE BETWEEN TWO TRADE UNIONS, SOME VOTERS EXPRESSED A PREFERENCE FOR ONE AND SOME FOR THE OTHER. ARE WE ENTITLED TO ASSUME THAT EACH VOTER IS SO COMMITTED TO THE TRADE UNION FOR WHICH HE VOTED THAT HE WOULD RATHER FOREGO THE PRIVILEGE OF COLLECTIVE BARGAINING THAN BARGAIN THROUGH THE OTHER? THAT MAY PERHAPS BE THE CASE BUT, IN OUR OPINION. IT WOULD BE HIGHLY IMPROPER FOR US TO MAKE SUCH A DEDUCTION WITHOUT FURTHER EVIDENCE. SUCH FURTHER EVIDENCE CAN ONLY BE OBTAINED BY OFFERING TO THE EMPLOYEES A FURTHER OPPORTUNITY TO EXPRESS THEIR VIEWS. COUNSEL FOR ALL PARTIES INTIMATED DURING THE HEARING BEFORE US FOLLOWING ON THE TAKING OF THE VOTE THAT A FURTHER VOTE MIGHT BE THE APPROPRIATE SOLUTION FOR THE PROBLEM PRESENTED BY THIS CASE. COUNSEL FOR THE RES-PONDENT AND FOR THE INTERVENER, HOWEVER, SUBMITTED THAT, IN CONNECTION WITH SUCH A VOTE, THE VOTERS SHOULD BE OFFERED THE SAME CHOICE AS THEY WERE OFFERED ON THE FIRST BALLOT, NAMELY A CHOICE BETWEEN THE PETITIONER AND THE INTERVENER. IN OUR OPINION, SUCH A COURSE IS LIKELY TO CAST LITTLE ADDITIONAL

THESE TWO APPLICATIONS WERE CONSOLIDATED AND THE TAKING OF A REPRESENTATION VOTE WAS DIRECTED. THE RESULT OF THE VOTE IS AS FOLLOWS:-

NUMBER OF NAMES ON REVISED VOTERS! LIST			438
NUMBER OF BALLOTS CAST		403	
NUMBER OF SPOILED BALLOTS	7		
NUMBER OF BALLOTS MARKED IN FAVOUR OF			
GENERAL TRUCK DRIVERS, UNION, LOCAL 879	210		
NUMBER OF BALLOTS MARKED IN FAVOUR OF			
INTERNATIONAL ASSOCIATION OF MACHINISTS	186		

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

DRIVERS UNION, LOCAL 879, FILED A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS IN WHICH IT SUBMITTED, FOR REASONS SET OUT IN THE STATEMENT, THAT (A) GENERAL TRUCK DRIVERS UNION, LOCAL 879, SHOULD BE CERTIFIED AS THE BARGAINING AGENT FOR THE EMPLOYEES CONCERNED, (B) IN THE ALTERNATIVE, THE REPRESENTATION VOTE SHOULD BE SET ASIDE AND A NEW VOTE DIRECTED, OR (C) IN THE FURTHER ALTERNATIVE, THE BOARD SHOULD SPECIFICALLY REFUSE TO IMPOSE ANY BAR WHICH WOULD PREVENT THE GENERAL TRUCK DRIVERS UNION, LOCAL 879, FROM REAPPLYING AT ANY TIME FOR CERTIFICATION OF THE EMPLOYEES CONCERNED.

AT THE HEARING, COUNSEL FOR GENERAL TRUCK DRIVERS UNION. LOCAL 879, STATED THAT HE DID NOT PROPOSE TO LEAD EVIDENCE WITH RESPECT TO ANY OF THE ALLEGATIONS CONTAINED IN THAT UNION'S STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS. HOW-EVER, HE MADE REPRESENTATIONS TO THE BOARD THAT THE BOARD SHOULD DIRECT A "RUN-OFF" REPRESENTATION VOTE IN WHICH THE VOTERS WOULD BE ASKED TO INDICATE WHETHER THEY WISHED TO BARGAIN THROUGH GENERAL TRUCK DRIVERS UNION, LOCAL 879. IN THE ALTERNATIVE, HE REQUESTED THAT IN THIS CASE THE BOARD SHOULD NOT FOLLOW ITS USUAL PRACTICE OF IMPOSING A SIX MONTHS BAR ON AN UNSUCCESSFUL UNION FOLLOWING THE TAKING OF A REPRESENTATION VOTE. IN SUPPORT OF HIS SUBMISSIONS CONCERNING THE RUN-OFF VOTE, COUNSEL FOR THE TRUCK DRIVERS UNION. LOCAL 879, RELIED ON THE REASONING OF A PREDECESSOR BOARD IN THE WRIGHT-HARGREAVES CASE, (1944) D.L.S. 7-1156 AND IN THE BORDEN COMPANY CASE, (1946) D.L.S. 7-1231. IN SUPPORT OF HIS SUBMISSION THAT NO BAR SHOULD BE IMPOSED, COUNSEL POINTED OUT THAT, SINCE SOME 90% OF THE EMPLOYEES HAD EXPRESSED A DESIRE IN THE REPRE-SENTATION VOTE TO BE REPRESENTED BY A UNION, IT WAS INEQUITABLE TO DENY THEM THE OPPORTUNITY TO BE SO REPRESENTED FOR A PERIOD OF SIX MONTHS.

The decisions that counsel referred to were made at a time when the Board was administering the Wartime Labour Relations Regulations, commonly known as "P.C. 1003". The Board has had occasion to deal with both of the submissions made by counsel for the General Truck Drivers Union, Local 879, under the legislation presently in effect. As to the first submission, the Board, in the Canadian Westinghouse Case, O.L.R.B. Monthly Report, March

1958, p. 25, REFERRED TO ITS "INABILITY TO FIND IN THE LEGISLATION ANY AUTHORITY FOR DROPPING FROM THE BALLOT THE UNION WHICH RECEIVED THE LEAST NUMBER OF VOTES IN THE REPRESENTATION VOTE PREVIOUSLY TAKEN". THIS POSITION WAS AFFIRMED IN THE NORTHERN ELECTRIC COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1959, p. 178. NOTHING THAT COUNSEL HAS SAID IN THE INSTANT CASE HAS LED US TO ALTER THE CONCLUSION SET OUT IN THOSE CASES. THE REQUEST FOR A RUN-OFF VOTE IS THEREFORE DENIED.

THE BOARD FINDS THAT, ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN THIS MATTER, NOT MORE THAN 50% OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF EITHER GENERAL TRUCK DRIVERS UNION, LOCAL 879 OR THE INTERNATIONAL ASSOCIATION OF MACHINISTS. BOTH APPLICATIONS ARE THEREFORE DISMISSED.

THE REQUEST OF COUNSEL FOR THE GENERAL TRUCK DRIVERS UNION THAT NO BAR BE IMPOSED IS DENIED. THE SITUATION IN THIS CASE DOES NOT DIFFER IN ANY MATERIAL RESPECT FROM THAT IN MANY OTHER CASES THAT HAVE COME BEFORE THE BOARD. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY EITHER THE GENERAL TRUCK DRIVERS UNION, LOCAL 879, OR BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF."

BOARD MEMBER G. RUSSELL HARVEY ADDED:

"ALTHOUGH I CONCUR IN THE CONCLUSION OF THE MAJORITY, IT SEEMS TO ME THAT THE REASONING OF THIS BOARD IN THE WRIGHT-HARGREAVES

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IN THE CASE REFERRED TO, THE BOARD SAID:

"...IF WE WERE TO DISMISS BOTH PETITIONS IN THIS CASE, WE WOULD BE IGNORING THE HIGHLY SIGNIFICANT FACT THAT BETWEEN 85% AND 88% OF THE EMPLOYEES IN THIS ENTERPRISE EXPRESSED A DESIRE TO BARGAIN COLLECTIVELY WITH THE EMPLOYER. WHEN CON-FRONTED WITH A CHOICE BETWEEN TWO TRADE UNIONS, SOME VOTERS EXPRESSED A PREFERENCE FOR ONE AND SOME FOR THE OTHER. ARE WE ENTITLED TO ASSUME THAT EACH VOTER IS SO COMMITTED TO THE TRADE UNION FOR WHICH HE VOTED THAT HE WOULD RATHER FOREGO THE PRIVILEGE OF COLLECTIVE BARGAINING THAN BARGAIN THROUGH THE OTHER? THAT MAY PERHAPS BE THE CASE BUT, IN OUR OPINION, IT WOULD BE HIGHLY IMPROPER FOR US TO MAKE SUCH A DEDUCTION WITHOUT FURTHER EVIDENCE. SUCH FURTHER EVIDENCE CAN ONLY BE OBTAINED BY OFFERING TO THE EMPLOYEES A FURTHER OPPORTUNITY TO EXPRESS THEIR VIEWS. COUNSEL FOR ALL PARTIES INTIMATED DURING THE HEARING BEFORE US FOLLOWING ON THE TAKING OF THE VOTE THAT A FURTHER VOTE MIGHT BE THE APPROPRIATE SOLUTION FOR THE PROBLEM PRESENTED BY THIS CASE. COUNSEL FOR THE RES-PONDENT AND FOR THE INTERVENER, HOWEVER, SUBMITTED THAT, IN CONNECTION WITH SUCH A VOTE, THE VOTERS SHOULD BE OFFERED THE SAME CHOICE AS THEY WERE OFFERED ON THE FIRST BALLOT, NAMELY A CHOICE BETWEEN THE PETITIONER AND THE INTERVENER. IN OUR OPINION, SUCH A COURSE IS LIKELY TO CAST LITTLE ADDITIONAL

LIGHT ON THE WISHES OF THE EMPLOYEES. SOME OF THE EMPLOYEES WOULD CONTINUE TO MARK THEIR BALLOTS IN THE SAME FASHION AS THEY DID ON THE FIRST OCCASION IN THE HOPE THAT A SUFFICIENT NUMBER OF OTHER EMPLOYEES WOULD CHANGE THEIR MINDS TO BREAK THE DEADLOCK. THE RESULT OF A SECOND VOTE UNDER SUCH CIRCUM-STANCES IS NOT UNLIKELY TO BE MUCH THE SAME AS IN THE CASE OF THE FIRST VOTE. THE MAIN GROUND FOR ORDERING A NEW VOTE WOULD BE TO ASCERTAIN WHETHER THE EMPLOYEES ARE SO DESIROUS OF COLLEC-TIVE BARGAINING AS TO UNITE IN THE CHOICE OF ONE TRADE UNION. THEIR WISHES IN THIS REGARD COULD ONLY BE DETERMINED BY A BALLOT ON WHICH THE NAME OF ONLY ONE OF THE TRADE UNIONS APPEARS. THOSE WHOSE DESIRE FOR COLLECTIVE BARGAINING OVERRIDES THEIR ALLEGIANCE TO THE TRADE UNION WHOSE NAME IS LEFT OFF THE BALLOT WILL HAVE AN OPPORTUNITY SO TO INDICATE BY MARKING THE BALLOT IN THE APPRO-PRIATE FASHION. ON THE OTHER HAND, THOSE WHO FEEL THAT THEIR ALLEGIANCE TO THE TRADE UNION WHOSE NAME DOES NOT APPEAR ON THE BALLOT IS GREATER THAN THEIR DESIRE FOR COLLECTIVE BARGAINING WILL ALSO HAVE AN OPPORTUNITY TO RECORD THEIR VIEWS. IN CONNEC-TION WITH SUCH A VOTE IT IS NO MORE THAN EQUITABLE THAT THE TRADE UNION WHICH RECEIVED THE MAJORITY OF THE VOTES CAST ON THE FIRST VOTE SHOULD BE ENTITLED TO TEST THE OPINION OF THE EMPLOYEES AFFECTED."

10885-65-R: United Steelworkers of America (Applicant) v. Porcelain and Metal Products Limited (Respondent) v. Porcelain and Metal Products Employees!
Association (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND ENGINEERING STAFF."
(120 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST	112
NUMBER OF BALLOTS CAST	112
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	56
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	55

## APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

10879-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. MONTREAL TRUST COMPANY (RESPONDENT). (9 EMPLOYEES).

11063-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION No. 721 (APPLICANT) v. ROSLYN METAL PRODUCTS LTD. (RESPONDENT). (4 EMPLOYEES).

11072-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS! INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. RIVARD CLEANERS LTD. (RESPONDENT). (34 EMPLOYEES).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

#### DISPOSED OF DURING NOVEMBER

10748-65-R: James Allan (Applicant) v. International Brotherhood of Electrical Workers, Local Union 353 (Respondent) v. Holley Electric Limited (Intervener). (10 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT, PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT.

HAVING REGARD TO ALL THE EVIDENCE AND IN PARTICULAR THE CONFLICT IN THE TESTIMONY OF THE APPLICANT, WE ARE NOT PREPARED TO ACCEPT H.S EVIDENCE RELATING TO THE ABSENCE OF MANAGEMENT SUPPORT IN THE ORIGINATION OF THE DOCUMENT FILED IN SUPPORT OF THIS APPLICATION.

WE FIND THAT MR. G. HOLLEY PARTICIPATED IN THE CIRCULATION OF THE DOCUMENT WHICH PURPORTED TO EVIDENCE THE VOLUNTARY SIGNIFICATION IN WRITING OF THE EMPLOYEES THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT.

WE ACCORDINGLY ARE NOT SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF HOLLEY ELECTRIC LIMITED, IN THE BARGAINING UNIT, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

THIS APPLICATION IS THEREFORE DISMISSED."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" DISSENT.

| WOULD FIND THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT AND | WOULD ACCORDINGLY HAVE DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER."

10913-65-R: EMPLOYEES OF: WONDER BAKERIES LIMITED (WINDSOR) (APPLICANT) v. RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS! UNION, LOCAL 461 (RESPONDENT) v. WONDER BAKERIES LIMITED (WINDSOR, ONT.) (INTERVENER). (26 EMPLOYEES).

Number of names on revised voters<sup>†</sup> list Number of Ballots cast Number of Ballots marked in Favour of respondent Number of Ballots marked **A**GAINST RESPONDENT

23

23

6

17

10977-65-R: The Office Employees of The Ontario-Minnesota Pulp and Paper Company Limited, Fort Frances, Ontario, as certified by the Ontario Labour Relations Board, September 20, 1963 (Applicants) v. Local No. 405, Office Employees International Union AFL-C10 (Respondent). (38 employees).

(RE: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED, OFFICE AND CLERICAL EMPLOYEES, FORT FRANCES MILL, FORT FRANCES, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANTS HAVE APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

WHILE THE APPLICANTS FILED, WITH THEIR APPLICATION, A DOCUMENT CONTAINING THE SIGNATURES OF TWENTY-NINE PERSONS, THE APPLICANTS¹ WITNESS COULD TESTIFY CONCERNING THE MANNER IN WHICH ONLY ONE PERSON SIGNED THE DOCUMENT. THE APPLICANTS¹ WITNESS WAS NOT PRESENT WHEN THE REMAINING TWENTY-EIGHT PERSONS SIGNED THE DOCUMENT AND OTHER THAN STATING THAT A FEW OF THE PERSONS HAD INDICATED TO HIM THAT THEY HAD SIGNED THE DOCUMENT VOLUNTARILY, THERE IS NO EVIDENCE BEFORE THE BOARD FROM WHICH THE BOARD COULD INFER THAT THE MAJORITY OF PERSONS WHO SIGNED THE DOCUMENT VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT.

IN THESE CIRCUMSTANCES, THE BOARD IS NOT SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE OFFICE AND CLERICAL EMPLOYEES OF THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED, IN THE BARGAINING UNIT, AT FORT FRANCES, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

11049-65-R: SIXTY FRONT STREET WEST LIMITED (APPLICANT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204, A.F.L.-C.I.O.-C.L.C. (RESPONDENT). (1 EMPLOYEE).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"For reasons given orally at the hearing of the Board on November 16th, 1965, this application is dismissed."

11073-65-R: Mr. WILLIAM LUMSDEN (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (163 EMPLOYEES).

(RE: BRUNSWICK OF CANADA LIMITED, COOKSVILLE, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

While the applicant filed with his application, a statement signed by more than fifty per cent of the employees of Brunswick of Canada Limited in the bargaining unit, the applicant was able to call witnesses to identify only 2 of the 86 signatures which appeared on the document. In addition, the applicant failed to call a witness who was able to testify from personal knowledge concerning the origination of the document which was filed in support of the application.

HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF BRUNSWICK OF CANADA LIMITED, IN THE BARGAINING UNIT, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

#### THE APPLICATION IS ACCORDINGLY DISMISSED."

11081-65-R: Bruce Ferguson and Fred Ball and on Behalf of the employees of United Carr Fastener Company of Canada Limited (Colborne) (Applicants) v. United Electrical, Radio and Machine Workers of America and its Local 520 (UE) (Respondent). (WITHDRAWN) (46 employees).

(RE: United Carr Fastener, Colborne, Ontario).

#### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING NOVEMBER

11095-65-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) v. R. CHAPPELL ET AL (RESPONDENTS). (WITHDRAWN).

11100-65-U: CANADIAN WESTINGHOUSE COMPANY LIMITED (APPLICANT) v. THOMAS R. ACTON ET AL (RESPONDENTS). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

10708-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Ford Motor Company of Canada, Limited (Respondent). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON THE BASIS OF THE EVIDENCE AND ARGUMENTS OF COUNSEL WE ARE OF THE OPINION THAT ARGUABLE QUESTIONS OF LAW ARISE IN THIS MATTER.

THE BOARD ACCORDINGLY CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE SAID RESPONDENT DID. AFTER NOTICE UNDER SECTION 11 OF THE LABOUR RELATIONS ACT AND WHERE NO COLLECTIVE AGREEMENT WAS IN OPERATION AND WITHOUT THE CONSENT OF THE APPLICANT, ALTER THE RATES OF WAGES OR A TERM OR CONDITION OF EMPLOYMENT OR A RIGHT OR PRIVILEGE OF ITS EMPLOYEES WHO ARE EMPLOYED IN THE OFFICES OF THE RESPONDENT AT BRAMALEA IN THE TOWNSHIP OF CHINGUACOUSY IN THE COUNTY OF PEEL. WHO ARE INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28th, 1965, IN THAT THE RESPONDENT DID ON AND AFTER JULY 16, 1965, CANCEL A COST-OF-LIVING BONUS OF \$5.20 TO WHICH THE SAID EMPLOYEES WERE ENTITLED FOR THE PAY PERIOD COMMENCING ON OR AFTER JULY 16TH, CONTRARY TO SECTION 59(1) OF THE ACT:
- (B) THAT THE RESPONDENT DID DISCRIMINATE AGAINST THOSE OF ITS EMPLOYEES INCLUDED IN THE .

  BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28, 1965, IN REGARD TO THEIR EMPLOYMENT OR TERMS OR CONDITIONS OF THEIR EMPLOYMENT BECAUSE THEY WERE MEMBERS OF A TRADE UNION OR BECAUSE THEY WERE EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT BY CANCELLING A COST-OF-LIVING BONUS OF \$5.20 TO WHICH THE SAID EMPLOYEES WERE ENTITLED FOR THE PAY PERIOD COMMENCING ON AND AFTER JULY 16TH, 1965, CONTRARY TO SECTION 50(A) OF THE SAID ACT;
- (c) THAT THE RESPONDENT DID IMPOSE OR PROPOSE THE IMPOSITION OF CONDITIONS IN THE CONTRACT OF EMPLOYMENT OF THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28TH, 1965, BY PURPORTING TO CANCEL A COST-OF-LIVING BONUS OF \$5.20 TO WHICH THE EMPLOYEES WERE ENTITLED FOR THE PAY PERIOD COMMENCING ON OR AFTER JULY 16TH, 1965, THEREBY SEEKING TO RESTRAIN THE EMPLOYEES FROM EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 50(B) OF THE SAID ACT;

- (D) THAT THE RESPONDENT DID BY THE IMPOSITION OF A PENALTY, NAMELY, THE PURPORTED CANCELLATION OF A COST-OF-LIVING BONUS OF \$5.20 TO WHICH THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28, 1965 WERE ENTITLED FOR THE PAY PERIOD COMMENCING ON OR AFTER JULY 16, 1965, SEEK TO COMPEL THE SAID EMPLOYEES TO CEASE TO EXERCISE RIGHTS UNDER THE LABOUR RELATIONS ACT, CONTRARY TO SECTION 50(C) OF THE SAID ACT;
- (E) THAT THE RESPONDENT DID INTERFERE WITH THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION BY CANCELLING A COST-OF-LIVING BONUS OF \$5.20 TO WHICH THOSE OF ITS EMPLOYEES INCLUDED IN THE BARGAINING UNIT DEFINED BY THE BOARD IN ITS CERTIFICATE DATED APRIL 28TH, 1965, WERE ENTITLED FOR THE PAY PERIOD COMMENCING ON OR AFTER JULY 16, 1965, CONTRARY TO SECTION 48 OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

10840-65-U: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Applicant) v. The Parisian Laundry Co. of Toronto Limited (Respondent). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:-

That the said respondent did contravene section 48 of The Labour Relations Act in that at Toronto, on or about September 14, 1965, it did interfere with the selection of a trade union by employees of the respondent."

10967-65-U: TEXTILE WORKERS UNION OF AMERICA, C.L.C. AFL-CIO (APPLICANT) v. TILCO PLASTICS LIMITED (RESPONDENT). (WITHDRAWN).

11001-65-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. ZEHR'S MARKETS LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT, RETAIL CLERKS INTERNATIONAL ASSOCIATION, APPLIES FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR FAILURE TO BARGAIN IN GOOD FAITH CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MAY 10TH, 1965, AND ON THE SAME DAY THE APPLICANT GAVE NOTICE TO BARGAIN TO THE RESPONDENT.

A NUMBER OF MEETINGS WERE HELD DURING MAY AND JUNE, 1965, AND SUBSEQUENTLY CONCILIATION SERVICES WERE GRANTED. A MEETING WAS HELD WITH A CONCILIATION OFFICER. AS A RESULT OF THESE DISCUSSIONS, AGREEMENT HAD BEEN REACHED WITH RESPECT TO CERTAIN NON-CONTENTIOUS MATTERS.

THE APPLICANT IS AT PRESENT BARGAINING AGENT ONLY FOR THE PART-TIME EMPLOYEES OF THE RESPONDENT. THE APPLICANT'S APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THE FULL-TIME EMPLOYEES OF THE RESPONDENT IS STILL BEFORE THIS BOARD AND A REPRESENTATION VOTE HAS BEEN DIRECTED. UNTIL THE OUTCOME OF THE APPLICATION FOR CERTIFICATION IS KNOWN THE BARGAINING POSITIONS OF THE PARTIES REMAIN UNCERTAIN. THE PARTIES HAVE, BY AGREEMENT, DELAYED NEGOTIATIONS ON CERTIFICATION IS KNOWN. SINCE THE DATE OF THE APPLICATION FOR CERTIFICATION OFFICER, IT WAS OPEN TO THE APPLICANT TO PROCEED WITH NEGOTIATIONS AS IT SAW FIT.

THE EVIDENCE GIVEN AT THE HEARING INDICATES THAT THE PARTIES PLACE DIFFERENT INTERPRETATIONS ON THE AGREEMENT TO DELAY NEGOTIATIONS UNTIL THE OUTCOME OF THE REPRESENTATION VOTE IS KNOWN. IT DOES NOT FALL TO US TO ADJUDICATE ON THESE DIFFERENCES. IF, BECAUSE OF MISUNDERSTANDING, AGREEMENTS WITH RESPECT TO THE TIME OR MANNER OF BARGAINING CANNOT BE CARRIED OUT, THE PARTIES REMAIN FREE TO TAKE WHATEVER STEPS MAY BE OPEN TO THEM UNDER THE LEGISLATION. THERE IS NO DOUBT THAT ANY PARTY WHO DELIBERATELY RESORTED TO DELAYING OR MISLEADING TACTICS IN ORDER TO PREVENT NEGOTIATIONS TAKING PLACE WOULD COMMIT A VIOLATION OF SECTION 12 OF THE ACT.

HAVING IN MIND ALL THE CIRCUMSTANCES OF THE INSTANT CASE AND HAVING IN MIND ALSO THE UNDERTAKING OF COUNSEL FOR THE RESPONDENT TO BARGAIN IN GOOD FAITH WITH THE APPLICANT, REGARDLESS OF THE OUTCOME OF THE REPRESENTATION VOTE (AS IT IS, OF COURSE, THE RESPONDENT'S DUTY TO DO), THE BOARD IS OF OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED BY GRANTING CONSENT TO THE INSTITUTION OF A PROSECUTION.

THE APPLICATION IS DISMISSED."

11032-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. WILLIAM LAND (RESPONDENT). (WITHDRAWN).

11033-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. PASQUALE BOCCHINO (RESPONDENT). (WITHDRAWN).

11035-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. DONALD J. MCRITCHIE (RESPONDENT). (WITHDRAWN).

11037-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. CLARENCE BONNER (RESPONDENT). (WITHDRAWN).

11038-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. HARRY KELP (RESPONDENT). (WITHDRAWN).

11039-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. DONALD HOWE (RESPONDENT). (WITHDRAWN).

## COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING NOVEMBER

10558-65-U: United Steelworkers of America (Complainant) v. National Steel Car Corporation Limited (Respondent).

#### - AND -

10637-65-U: United Steelworkers of America (Complainant) v. National Steel Car Corporation Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"After the commencement of the hearing with respect to one of the complainants, the Board, on the consent of the parties, ordered that the two complaints, Board file 10558-65-U, Brought on behalf of Gordon F. Grove, James Gautreau and William Creighton, and Board file 10637-65-U, Brought on Behalf of Rubert Major and Sydney Hinchcliffe, Be consolidated.

Counsel for the complainant indicated that the union was not proceeding with the complaint on behalf of William Creighton. The complaint on behalf of this aggrieved is, therefore, dismissed.

The evidence indicates that Gordon F. Grove and James Gautreau, both welders, were discharged from their employment on June 10th, 1965. Robert Major, also a welder, was discharged from his employment on June 22nd, and Sydney Hinchcliffe, a spray painter, was discharged on July 5th, 1965. On the dates of their discharges, Hinchcliffe had been in the employ of the company for some 25 years, Grove since September, 1963, Major since May, 1965, and Gautreau after having formerly been with the company for a short period between February and March of this year and having left, from May, 1965. Prior to their discharges, all these employees were engaged in organizational activities on behalf of the union.

THERE IS A SHARP CONFLICT OF TESTIMONY BETWEEN THE EVIDENCE GIVEN BY THE COMPLAINANT'S WITNESSES AND THE EVIDENCE GIVEN BY MR. A. McEdwards on Behalf of the Respondent. It is manifest that the Board's decision in this case must turn on

OUR ASSESSMENT OF THE CREDIBILITY OF ALL THESE WITNESSES.

WHILE THERE WERE SOME PARTS OF THE TESTIMONY OF THE AGGRIEVED EMPLOYEES WHICH, BECAUSE OF OBVIOUS PARTISAN EXAGGERATION, WE WOULD HESTITATE TO ACCEPT IN THEIR ENTIRETY, WE BELIEVE THAT THEIR RECOLLECTIONS OF THE INCIDENTS AND COURSE OF EVENTS LEADING TO AND SURROUNDING THEIR DISCHARGES, ARE IN SUBSTANCE OF SUPERIOR CREDIBILITY THAN THE ACCOUNT GIVEN OF THEM BY MR. MCEDWARDS IN HIS TESTIMONY. WE ARE DRIVEN TO CONCLUDE FROM OUR OBSERVATIONS OF HIS DEMEANOUR AND EVASIVE MANNER IN SOME INSTANCES IN GIVING EVIDENCE IN THE WITNESS BOX, AND FROM THE INHERENT IMPROBABILITIES OF HIS EVIDENCE WHEN CONSIDERED IN THE LIGHT OF ALL THE CIRCUMSTANCES AND THE EVIDENCE GIVEN BY THE AGGRIEVED EMPLOYEES, THAT THE EVIDENCE OF MR. MCEDWARDS AS TO THE REASONS WHY HE FIRED THE EMPLOYEES IS UNWORTHY OF BELIEF.

AFTER A CAREFUL STUDY OF ALL THE FACTS AND CIRCUMSTANCES REVEALED BY THE EVIDENCE, WE ARE CONSTRAINED TO FIND THAT THE RESPONDENT'S ACTIONS IN DISCHARGING THE EMPLOYEES IN QUESTION, WHETHER IN FACT LEGAL CAUSE EXISTED TO DISCHARGE SOME OF THEM OR NOT, WAS FOR THE PRIME PURPOSE OF GETTING RID OF KNOWN UNION ORGANIZERS. MR. MCEDWARDS' PURPORTED ASSERTATIONS IN THE WITNESS BOX OF MANAGEMENT'S ATTITUDE OF NEUTRALITY TOWARDS, OR ITS UNCONCERN AT THE TIME, FOR THE FACT THAT ITS EMPLOYEES WERE JOINING THE UNION WAS CLEARLY BELIED BY HIS ACTIONS. ON OUR VIEW OF THE EVIDENCE, THE PREPONDERANCE OF PROBABILITY FAVOURS THE CONCLUSION THAT MR. MCEDWARDS WAS INVOLVED IN A CLANDESTINE SCHEME TO GET RID OF KNOWN UNION ORGANIZERS BY SEEKING OUT OR FABRICATING AND RELYING ON PLAUSIBLE AND OSTENSIBLE EXCUSES TO FIRE THEM FOR ALLEGED VIOLATIONS OF COMPANY POLICIES; THE REAL REASONS, HOWEVER, WERE THAT THEY WERE UNION ORGANIZERS.

In the result, we find that the respondent discharged Gordon F. Grove, James Gautreau, Robert Major and Sydney Hinchcliffe, contrary to the provisions of section  $50(\,\mathrm{a})$  of The Labour Relations Act.

IN OUR OPINION, THESE EMPLOYEES ARE ENTITLED TO BE REINSTATED IN THEIR EMPLOYMENT AND TO BE PAID COMPENSATION FOR THEIR LOSS OF PAY RESULTING FROM THEIR DISCHARGE CONTRARY TO THE ACT. IN ASSESSING AND COMPUTING THEIR LOSS OF PAY WE HAVE HAD REGARD TO THE FACT THAT THE COMPLAINANT UNION AGREED, AS A CONDITION OF AN ADJOURNMENT, THAT THE UNION WOULD NOT SEEK COMPENSATION FOR LOSS OF PAY BEYOND AUGUST 30TH, 1965. WE HAVE ALSO, OF COURSE, HAD REGARD TO THE AMOUNT OF EARNINGS WHICH THESE EMPLOYEES WERE RECEIVING AT THE TIME OF DISCHARGE FROM THEIR EMPLOYMENT WITH THE RESPONDENT COMPANY, AND TO THE AMOUNT WHICH THEY HAVE EARNED SINCE AND TO THEIR EFFORTS, IF ANY, IN MITIGATING THEIR LOSSES.

OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY GORDON F. GROVE, JAMES GAUTREAU, ROBERT MAJOR AND SYDNEY HINCHCLIFFE TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS WHICH THEY HAD AND RECEIVED PRIOR TO AND UP TO THE TIME OF THEIR DISCHARGES.
- (2) As compensation for their loss of Wages and EMPLOYMENT BENEFITS, THE RESPONDENT SHALL FORTHWITH PAY TO:-

GORDON F. GROVE THE SUM OF \$291.32; JAMES GAUTREAU, \$500.00; ROBERT MAJOR, \$545.08; SYDNEY HINCHCLIFFE, \$306.00.

(3) THIS DETERMINATION SHALL NOT AFFECT OR PREJUDICE THE RIGHT OF THE EMPLOYEES TO COMPENSATION FOR ANY LOSS OF WAGES SUSTAINED BY THEM FROM THE DATE OF RELEASE OF THIS DETERMINATION AND THE DATE OF THEIR ACTUAL REINSTATEMENT."

BOARD MEMBER H.F. IRWIN DISSENTED AND SAID:-

"| DISSENT.

IT IS THE DUTY AND RESPONSIBILITY OF EVERY EMPLOYER TO MAINTAIN ORDER, DISCIPLINE AND EFFICIENCY IN RESPECT OF THE OPERATION OF HIS INDUSTRIAL ESTABLISHMENT. AN EMPLOYEE IS NOT EXCUSED FROM OBEYING COMPANY RULES AND REGULATIONS OR RENDERED IMMUNE FROM DISCIPLINARY ACTION OR DISCHARGE MERELY BECAUSE HE ENGAGED IN UNION ACTIVITY.

IN THE INSTANT CASE, <u>JAMES GAUTREAU</u> WAS DISMISSED FOR POOR ATTENDANCE AND ABSENTEEISM; <u>ROBERT MAJOR</u> FOR ABSENTEEISM; AND <u>Sydney Hinchcliffe</u> for debts that resulted in wage attachments and garnishees being issued. Consequently, I find that these three employees were discharged for cause and not contrary to the provisions of section 50(a) of the Labour Relations Act. I would have dismissed their respective complaints for reinstatement and loss of compensation.

I CONCUR IN THE FINDING OF THE MAJORITY IN RESPECT OF THE REINSTATEMENT AND PAYMENT FOR LOSS OF COMPENSATION AWARDED TO GORDON F. GROVE. ON THE EVIDENCE BEFORE ME, I CAN FIND NO WILFUL MISREPRESENTATION BY HIM IN RESPECT OF STATEMENTS CONTAINED IN HIS APPLICATION FOR EMPLOYMENT."

10747-65-U: TEXTILE WORKERS UNION OF AMERICA, CLC. AFL-CIO (APPLICANT) v. TILCO PLASTICS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD WAS INFORMED AT THE COMMENCEMENT OF THE HEARING THAT THE PARTIES HAD REACHED A COMPROMISE OF THE MATTERS IN DISPUTE BETWEEN THEM. THIS AGREEMENT WAS RECITED TO THE FOLLOWING EFFECT:—

- (1) THE AGGRIEVED EMPLOYEE, ELIZABETH GOULD, IS
  TO BE REINSTATED, FORTHWITH, WITHOUT BACK PAY
  AND WITHOUT PREJUDICE TO THE RESPONDENT'S
  CLAIM THAT SHE WAS DISMISSED FOR CAUSE;
  - (2) THE RESPONDENT'S REINSTATEMENT OF THE AGGRIEVED EMPLOYEE SHALL NOT BE CONSTRUED AS A CONDONATION OF THIS EMPLOYEE'S PREVIOUS CONDUCT.
  - (3) ALL PENDING APPLICATIONS FOR LEAVE TO PROSECUTE ARISING OUT OF MATTERS NOW IN DISPUTE BETWEEN THE PARTIES SHALL BE WITHDRAWN AND A THREATENED APPLICATION FOR LEAVE TO PROSECUTE FOR UNLAWFUL LOCKOUT SHALL NOT BE INSTITUTED.

IN VIEW OF THE SETTLEMENT OF THIS COMPLAINT THIS PROCEEDING

10931-65-U: United Steelworkers of America (Complainant) v. International Formed Tubes Ltd. (Respondent).

10949-65-U: United Steelworkers of America (Complainant) v. Cooey Metal Products Limited (Respondent).

10966-65-U: Textile Workers Union of America, C.L.C. AFL-CIO (COMPLAINANT)
v. Tilco Plastics Limited (Respondent).

11118-65-U: FRANK KUNTZ (COMPLAINANT) V. PITT STREET HOTEL LTD. (KING GEORGE HOTEL) (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a complaint under section 65 of The Labour Relations Act. A previous complaint under the same section of the Act was filed by the present complainant on November 8, 1962. That complaint was processed as Board file No. 4892-62-U. Following a hearing into that complaint, the Board, on March 13, 1963, dismissed the complaint. In its written reasons for decision, the Board stated that, in general, it would not inquire into a complaint arising out of a violation of some provision of the Act where an alternative remedy under a collective agreement is available to the complainant. Such an alternative remedy was available to the complainant in the circumstances of that case. The Board went on to say that, in the exercise of its discretion under section 65(4) of the Act,

IT WOULD INQUIRE INTO A COMPLAINT NOTWITHSTANDING THE EXISTENCE OF AN ALTERNATIVE REMEDY UNDER A COLLECTIVE AGREEMENT WHERE THERE WAS "AN ALLEGATION OF COLLUSION". THE BOARD HELD THERE, ON THE BASIS OF THE EVIDENCE PLACED BEFORE IT, THAT THE ALLEGATION OF COLLUSION WAS NOT SUBSTANTIATED AND ACCORDINGLY IT DISMISSED THE COMPLAINT.

IN SO FAR AS THE INSTANT COMPLAINT IS CONCERNED, THE BOARD IS OF OPINION THAT THE STATEMENT OF THE NATURE OF THE ACTS AND OMISSIONS COMPLAINED OF IS IN ALL ESSENTIAL RESPECTS IDENTICAL WITH WHAT WAS ALLEGED IN THE PREVIOUS COMPLAINT REFERRED TO ABOVE. IT IS A LEGAL PRINCIPLE OF LONG STANDING THAT A MATTER ADJUDICATED BETWEEN THE SAME PARTIES, ON THE SAME QUESTION, BY A LEGALLY CONSTITUTED BODY ACTING WITHIN ITS JURISDICTION IS CONCLUSIVE BETWEEN THE PARTIES. HAVING REGARD TO THIS CONSIDERATION AS WELL AS TO THE FACT THAT THE INSTANT COMPLAINT WAS FILED ABOUT THREE YEARS AFTER THE ACTS THAT CONSTITUTE THE BASIS FOR THE COMPLAINT TOOK PLACE, THIS CUMPLAINT IS DISMISSED."

## REFERENCES TO BOARD PURSUANT TO SECTION 794 DISPOSED OF DURING NOVEMBER

10808-65-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) Local 641 (Trade Union) v. Lawson-McMullen-Victoria Limited (Employer).

(SEE INDEXED ENDORSEMENT PAGE 551 ).

1758 (Trade Union) v. Fort Construction & Equipment Ltd. (Employer).

(SEE INDEXED ENDORSEMENT PAGE 555 ).

## INDEX ENDORSEMENTS - CERTIFICATION

10502-65-R: Building Service Employees' Union, Local 210 (Applicant) v. The Salvation Army Grace Hospital, Windsor, Ontario(Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification. Following Hearings on June 24th and September 1st, 1965, at which the respondent was represented by counsel, the Board directed that a representation vote be taken.

Pursuant to the Registrar's direction the parties met and on September 13th, 1965, to arrange for the taking of the representation vote and the parties wrote a joint letter to the Board, wherein they agreed, among other things, that the vote be held on September 27th, 1965, at 6:45 to 7:30 a.m.

SUBSEQUENTLY, BY TELEGRAM DATED SEPTEMBER 16TH, 1965, THE PARTIES AGREED TO EXTEND THE TIME FOR VOTING BY PROVIDING AN ADDITIONAL VOTING TIME BETWEEN 1 AND 3 P.M. ON SEPTEMBER 27TH.

FIVE NOTICES ADVISING THE EMPLOYEES OF THE TIMES AND HOURS OF THE VOTING WERE POSTED ON THE RESPONDENT'S PREMISES.

THE ORIGINAL VOTERS' LIST PREPARED BY THE RESPONDENT CONTAINED A TOTAL OF 66 NAMES. ON SEPTEMBER 27TH, AT THE TAKING OF THE VOTE, 26 OF THE PERSONS ON THE VOTERS' LIST WERE REMOVED FROM THE VOTERS' LIST PURSUANT TO THE PROVISIONS OF SECTION 7 (4) OF THE ACT BY REASON OF THE FACT THAT THEY WERE ABSENT FROM WORK DURING VOTING HOURS ON THE DATE THE VOTE WAS TAKEN.

WHEN IT APPEARED TO THE BOARD'S RETURNING OFFICER THAT THE VOTE WOULD HAVE TO BE EXTENDED FOR SEVERAL DAYS IN ORDER TO PERMIT ALL PERSONS ELIGIBLE TO VOTE TO CAST THEIR BALLOTS DURING THEIR WORKING HOURS, THE PARTIES AGREED, AFTER THE RESPONDENT'S REPRESENTATIVE HAD CONSULTED WITH OTHER OFFICIALS OF THE RESPONDENT, TO REMOVE AN ADDITIONAL 22 NAMES FROM THE VOTERS' LIST.

THE REVISED VOTERS! LIST WHICH WAS AGREED TO BY THE PARTIES CONTAINED THE NAMES OF 18 EMPLOYEES OF WHOM 14 CAST BALLOTS IN THE REPRESENTATION VOTE.

Of the 14 ballots which were cast in the representation vote, 10 were marked in favour of the applicant and 4 were marked against the applicant.

The parties signed an agreement in writing wherein it was agreed that the names of the  $22\ \text{persons}$  be removed from the voters' List.

The notice of the report of the Returning Officer (Form 49) which was posted following the taking of the vote had attached thereto as Appendix "A" the names of the 26 persons who were removed from the voters' list pursuant to section 7(4) of the Act and also had attached thereto as Appendix "B" the names of 22 persons who were removed from the voters' list with the consent of the parties.

THE PARTIES ALSO SIGNED A DOCUMENT WHICH READ IN PART AS FOLLOWS:

"We the undersigned hereby consent to an immediate counting of the ballots cast at the representation vote directed by the Board and held on the 27th day of September, 1965.

AND WE HEREBY WAIVE ANY OBJECTIONS AS TO THE REGULARITY AND SUFFICIENCY OF THE BALLOTING.

DATED THIS 27TH DAY OF SEPTEMBER, 1965."

THE PARTIES FURTHER SIGNED A CERTIFICATE OF CONDUCT OF ELECTION WHICH READS IN PART AS FOLLOWS:

"We, THE UNDERSIGNED, ACTED AS SCRUTINEERS FOR THE PARTIES HEREIN IN THE CONDUCT OF THE BALLOTING AT THE TIME AND PLACE ABOVE MENTIONED. WE CERTIFY THAT THE BALLOTING WAS FAIRLY CONDUCTED AND THAT ALL ELIGIBLE VOTERS WERE GIVEN AN OPPORTUNITY TO CAST THEIR BALLOTS IN SECRET, AND THAT THE BALLOT BOX WAS PROTECTED IN THE INTEREST OF A FAIR AND SECRET VOTE."

None of the employees whose names appear on Appendix "A" of Appendix "B" attached to the Report of the Returning Officer, and none of the employees in the bargaining unit, filed a statement of objections and desire to make representations with respect to the Report of the Returning Officer or to the representation vote in this matter.

The respondent, however, filed a statement of objections and desire to make representations with respect to the Report of the Returning Officer and the representation vote. This matter came on for hearing on October 26th, 1965, to hear the evidence and representations of the parties with respect to the representation vote in this matter.

THE RESPONDENT ARGUED THAT BECAUSE THE VOTERS! LIST HAD BEEN REDUCED FROM 66 TO 18 IN THE MANNER OUTLINED ABOVE, THIS PRACTICE MIGHT LEAD TO COLLUSION BETWEEN THE APPLICANT AND THE EMPLOYER AND SHOULD NOT BE PERMITTED BY THE BOARD.

THE RESPONDENT FURTHER ARGUED THAT SINCE SO FEW PERSONS VOTED, THE RESULT OF THE VOTE DID NOT INDICATE THE TRUE WISHES OF ALL THE EMPLOYEES IN THE BARGAINING UNIT AND EVEN THOUGH THE PARTIES AGREED TO THE REDUCTION OF THE VOTERS! LIST THE BOARD, IN ITS DISCRETION, SHOULD REFUSE TO CERTIFY THE APPLICANT BUT SHOULD DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN IN ORDER THAT THE TRUE WISHES OF ALL THE EMPLOYEES IN THE BARGAINING UNIT CAN BE ASCERTAINED.

THERE WAS NO EVIDENCE WHICH WOULD INDICATE THAT THE RESPONDENT WAS IN ANY MANNER MISLED OR THAT THE PARTIES COLLUSIVELY ATTEMPTED TO AFFECT THE RESULTS OF THE VOTE. THERE IS ALSO NO EVIDENCE BEFORE US TO INDICATE THAT ANY EMPLOYEE HAD ATTEMPTED TO VOTE AND HAD BEEN REFUSED THE RIGHT TO VOTE OR THAT THE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT WERE DISSATISFIED WITH THE RESULT OF THE REPRESENTATION VOTE. SINCE NO EMPLOYEE SAW FIT TO FILE A STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS WITH RESPECT TO THIS MATTER, THE BOARD IS IMPELLED TO FIND THAT THE REPRESENTATION VOTE REFLECTS THE TRUE WISHES OF THE MAJORITY OF THE EMPLOYEES IN THIS MATTER.

HAVING REGARD TO ALL THE EVIDENCE AND IN PARTICULAR
THE FACT THAT THE PARTIES AGREED, IN WRITING, TO THE REMOVAL OF
THE NAMES FROM THE VOTERS' LIST AND CONSENTED IN WRITING TO THE
IMMEDIATE COUNTING OF THE BALLOTS IN THIS CASE AND ALSO WAIVED
ANY OBJECTIONS AS TO THE IRREGULARITY AND SUFFICIENCY OF THE
BALLOTING, THE BOARD IS OF THE OPINION THAT THE RESPONDENT
CANNOT NOW BE HEARD TO OBJECT TO THE REPRESENTATION VOTE IN
THIS MATTER."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

There was a total of 66 names on the original voters' List agreed to by the parties. The Returning Officer's Report shows that 26 names (39%) were removed from the voters' List under section 7 (4) of the Labour Relations act because the employees were not at work on the day the vote was held. An additional 22 names (33 1/3%) were removed for other reasons. Eighteen (18) names (27%) were on the revised voters' List. Only 14 employees (21%) cast their ballots.

THIS IS A BARGAINING UNIT OF PART-TIME EMPLOYEES WHO ARE NOT SCHEDULED TO WORK EVERY DAY. THE POLL SHOULD HAVE BEEN KEPT OPEN AT SPECIFIED HOURS FOR SEVERAL DAYS TO ENSURE, AS FAR AS POSSIBLE, THAT ALL EMPLOYEES ELIGIBLE TO VOTE HAD AN OPPORTUNITY TO CAST THEIR BALLOT WHILE AT WORK. THIS IS IN ACCORDANCE WITH THE REGISTRAR'S INSTRUCTIONS REGARDING VOTE, PARAGRAPH 2C. THIS ARRANGEMENT SHOULD HAVE BEEN ADHERED TO BY THE PARTIES WHEN ARRANGING THE HOURS AND DAYS THE POLL WOULD BE OPEN.

IN THE ABOVE CIRCUMSTANCES, I DO NOT CONSIDER THAT THE VOTES CAST REPRESENT THE TRUE WISHES OF THE EMPLOYEES.

| WOULD HAVE DIRECTED THAT A NEW VOTE BE CONDUCTED AND THAT SPECIAL ATTENTION BE GIVEN TO POLLING DAYS AND HOURS SO THAT AS MANY EMPLOYEES AS POSSIBLE WOULD HAVE AN OPPORTUNITY TO VOTE WHILE AT WORK."

10831-65-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Taplen Construction Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Despite the bargaining unit proposed by the respondent in its reply, at the hearing before the Board, counsel for the respondent agreed that the geographic area in the bargaining unit should not include the County of Papineau in Quebec. The Board therefore finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Carleton, (excepting therefrom the Township of Marlborough) Russell and Prescott, save and except non-working foremen and persons above

THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE APPLICANT TRADE UNION FILED 9 CERTIFICATES OF MEMBERSHIP IN SUPPORT OF ITS APPLICATION. THE RESPONDENT FILED A LIST OF EMPLOYEES INDICATING THAT ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY SEPTEMBER 9, 1965, THERE WERE 18 PERSONS IN THE BARGAINING UNIT. THE PARTIES SUBSEQUENTLY SIGNED A STATEMENT IN THE PRESENCE OF A BOARD EXAMINER, WHO WAS APPOINTED TO INQUIRE INTO THE LIST OF EMPLOYEES AND THE COMPOSITION OF THE BARGAINING UNIT, TO THE EFFECT THAT 15 OF THE 18 PERSONS WERE ELIGIBLE FOR THE PROPOSED BARGAINING UNIT AND THAT THE OTHER 3 PERSONS ON THE LIST WERE WORKING IN THE PROVINCE OF QUEBEC ON SEPTEMBER 9, 1965. AT A HEARING HELD IN OTTAWA, THE BOARD, AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE INCLUSION OF THE SAID 3 PERSONS, RULED THAT SINCE THE 3 EMPLOYEES WERE NOT AT WORK IN THE AREA SET OUT ABOVE IN THE DESCRIPTION OF THE BARGAINING UNIT, ON THE DATE OF THE MAKING OF THE APPLICATION, SUCH PERSONS WERE NOT TO BE COUNTED AS "EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE". (SEE SECTION SECTION 7(1) OF THE LABOUR RELATIONS ACT. ) ON THE DATE OF THE MAKING OF THE APPLICATION, THEREFORE, THE BARGAINING UNIT CONSISTED OF 15 PERSONS.

THERE WERE FILED WITH THE BOARD 12 TYPEWRITTEN STATEMENTS OF OBJECTION AND DESIRE TO MAKE REPRESENTATIONS, SIGNED
BY 12 EMPLOYEES. FOUR OF THE 12 EMPLOYEES HAD ALSO SIGNED
CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT. THREE OF THE
4 STATEMENTS OF DESIRE, IN ADDITION TO INDICATING THAT THE
SIGNATORIES THERETO DID NOT WANT THE APPLICANT TO ACT AS THEIR
BARGAINING AGENT WITH THE RESPONDENT, ALSO PROVIDED:

This is to inform you that I signed a form handed to me by a representative of the United Brotherhood of Carpenters and Joiners of America, Local Union 93, without carefully reading that form and without knowing exactly what IT was that I signed.

WHEN THE FORM WAS HANDED TO ME | WAS TOLD BY THE REPRESENTATIVE THAT IT WAS MERELY TO STATE THAT | WAS A MEMBER OF THAT PARTICULAR UNION. | WAS NOT TOLD OF ANY OTHER CONSEQUENCES THAT MIGHT HAVE FLOWED FROM SIGNING THAT FORM.

THE FOURTH DOCUMENT MERELY INDICATED THAT THE SIGNATORY DID NOT WISH THE APPLICANT TO ACT AS HIS BARGAINING AGENT WITH THE RESPONDENT. THIS PARTICULAR DOCUMENT ALSO CONTAINED SOME HAND-WRITTEN WORDS IN ENGLISH TO THE EFFECT THAT A CANADIAN UNION WAS PREFERRED.

IN ITS REPLY THE RESPONDENT MADE CERTAIN ALLEGATIONS RESPECTING THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT, AND IN DUE COURSE INFORMED THE BOARD THAT IT INTENDED TO CALL BETWEEN 13 AND 15 WITNESSES IN SUPPORT THEREOF. ACCORDINGLY, THE BOARD DIRECTED THAT THE CASE BE LISTED FOR HEARING IN OTTAWA. AT THAT HEARING COUNSEL FOR THE RESPONDENT ELECTED NOT TO CALL EVIDENCE IN CONNECTION WITH HIS ALLEGATIONS. HAD HE DECIDED TO DO SO, THE BOARD WOULD HAVE PROCEEDED IMMEDIATELY TO HEAR RESPONDENT'S WITNESSES IN ACCORDANGE WITH ITS REGULAR PRACTICE IN THIS REGARD. IN THE CIRCUMSTANCES, HOWEVER, THE BOARD THEN PROCEEDED TO HEAR THE EMPLOYEES WHO HAD FILED OBJECTIONS TO THE APPLICATION AS OUTLINED ABOVE.

AT THIS STAGE IT IS NECESSARY TO REVIEW CERTAIN WELL-ESTABLISHED POLICIES AND PROCEDURES OF THE BOARD WITH WHICH, APPARENTLY, COUNSEL FOR THE RESPONDENT WAS NOT FAMILIAR. UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT. THE BOARD IS GIVEN POWER "TO DETERMINE THE FORM IN WHICH AND THE TIME AS OF WHICH EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION ... SHALL BE PRESENTED TO THE BOARD ON AN APPLICATION FOR CERTIFICATION ... AND TO REFUSE TO ACCEPT ANY EVIDENCE OF MEMBERSHIP OR OBJECTION ... THAT IS NOT PRESENTED IN THE FORM AND AS OF THE TIME SO DETERMINED". PURSUANT TO SUCH POWERS, THE BOARD HAS PROVIDED IN SECTION 50(1) OF ITS RULES OF PROCEDURE THAT SUCH EVIDENCE OF MEMBERSHIP OR OF OBJECTION SHALL NOT BE ACCEPTED BY THE BOARD UNLESS IT IS "IN WRITING, SIGNED BY AN EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES. AS THE CASE MAY BE ... ". SUBSECTION 2 OF THE SAID SECTION 50 THEN GOES ON TO PROVIDE THAT "NO EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION ... SHALL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE REFERRED TO IN SUBSECTION 1."

IN CERTIFICATION APPLICATIONS, THEREFORE, THE BOARD PROCEEDS ON THE BASIS OF WRITTEN OR DOCUMENTARY EVIDENCE AND THE REASON FOR THIS IS TO BE FOUND IN SECTION 83(1) OF THE LABOUR RELATIONS ACT WHICH PROVIDES FOR SECRECY ON THE QUESTIONS AS TO WHETHER A PERSON IS OR IS NOT A UNION MEMBER OR DOES OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION. CONSEQUENTLY, THE BOARD'S PROCEDURES AND RULES ARE INTENDED TO DISCOURAGE, AS FAR AS POSSIBLE, EMPLOYEES HAVING TO DISCLOSE TO THE PARTIES THEIR WISHES WITH RESPECT TO THE UNION. IN PARTICULAR, THE BOARD SEEKS TO AVOID WHAT MIGHT BEST BE DESCRIBED AS AN ORAL POLL IN PUBLIC AMONG THE EMPLOYEES. NOT ONLY IS THIS COMPLETELY CONTRARY TO THE SPIRIT AND INTENT OF SECTION 83(1), BUT SUCH EVIDENCE, ESPECIALLY THAT OF OPPOSITION TO A TRADE UNION, GIVEN AS IT IS, IN THE PRESENCE OF THE EMPLOYER, WHO EXERCISES CONTROL OVER SUCH WITNESSES EMPLOYMENT FUTURE, IS OF RELATIVELY LITTLE VALUE. NOW IT IS TRUE THAT WHERE OBJECTIONS IN WRITING, SIGNED BY EMPLOYEES, ARE FILED WITH THE BOARD, FIRST-HAND EVIDENCE IS REQUIRED TO BE PRODUCED AT A HEARING WITH RESPECT TO THE ORIGINATION AND MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE PURPOSE OF SUCH EVIDENCE IS TO ASCERTAIN WHETHER THE DOCUMENTARY EVIDENCE IN QUESTION REPRESENTS A VOLUNTARY

EXPRESSION OF OPINION, FREE FROM THE INFLUENCE OF MANAGEMENT, ON THE PART OF THOSE SIGNING THE DOCUMENTS. THE PERSONS WHO TESTIFY ON THESE MATTERS ARE THOSE WHO HAVE PREPARED AND CIRCULATED THE DOCUMENTS IN QUESTION. WHILE IT MAY BE NECESSARY FOR THESE WITNESSES TO REVEAL THEIR OPPOSITION TO THE UNION, THE IDENTITY OF MOST OF THE PERSONS SIGNING THE DOCUMENTS IS KEPT SECRET BECAUSE THE WITNESSES MERELY TESTIFY THAT THEY DID OR DID NOT WITNESS THE SIGNATURES ON THE DOCUMENTS. NAMES ARE NOT PERMITTED TO BE REVEALED.

IT IS OBVIOUS, THEN, THAT WHEN EMPLOYEES GIVE EVIDENCE RESPECTING WRITTEN STATEMENTS IN OPPOSITION TO THE APPLICATION, THAT EVIDENCE IS OF A SOMEWHAT RESTRICTED NATURE. FURTHERMORE, UNLESS A PRIMA FACIE CASE OF IMPROPRIETIES CONCERNING THE ORIGINATION AND/OR CIRCULATION OF SUCH STATEMENTS IS MADE OUT, CROSS-EXAMINATION OF THE WITNESSES IS NOT PERMITTED. AFTER THE WITNESSES HAVE GIVEN THEIR EVIDENCE, THE PARTIES, AND THIS INCLUDES THE APPLICANT, ARE ONLY PERMITTED TO SUGGEST FURTHER QUESTIONS TO CLARIFY THE EVIDENCE ALREADY GIVEN.

IN THE PRESENT CASE, THERE WERE 12 SEPARATE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION, AND ALL 12 APPEARED AT THE HEARING IN SUPPORT OF THEIR INDIVIDUAL STATEMENTS. SINCE FROM THESE APPEARANCES. THE WORDING ON THE STATEMENTS AND OTHER SURROUNDING CIRCUMSTANCES IT WAS CLEAR THAT THE IDENTITY OF THE PERSONS WHO HAD SIGNED FOR AND AGAINST THE APPLICANT WOULD BE REVEALED, ONLY THE 4 PERSONS WHO HAD ALSO SIGNED CERTIFICATES OF MEMBERSHIP FOR THE APPLICANT WERE CALLED ON TO GIVE EVIDENCE. THE REMAINING 8 PERSONS, 3 OF WHOM HAD WORKED IN QUEBEC ON THE DATE OF THE MAKING OF THE APPLICATION, WERE, FROM THE BOARD'S POINT OF VIEW, TO BE CONSIDERED AS OPPOSED TO THE APPLICATION BECAUSE NO EVIDENCE OF MEMBERSHIP IN THE APPLICANT UNION WAS FILED ON THEIR BEHALF. ON THIS BASIS, THE PARTIES AGREED THERE WAS NO NEED TO HEAR EVIDENCE RESPECTING THE DOCUMENTS WHICH THEY HAD SIGNED. IN ASCERTAINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WHO WERE UNION MEMBERS, THESE PERSONS WOULD OBVIOUSLY BE COUNTED AGAINST THE UNION, PROVIDED, OF COURSE, THAT THEY WERE IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

Counsel for the respondent sought to question the 4 employees who gave evidence on matters relating to the allegations which the respondent had made in its reply. Having regard to the nature of the proceeding as outlined above and to the fact that counsel had elected not to proceed with the allegations contained in the reply, the respondent was refused permission to pursue the requested line of questions. However, the Board ruled that the 3 employees whose statements referred to the circumstances under which they had signed the certificates of membership in the applicant union would be permitted to give such evidence as they saw fit with respect to these additional matters. It should be noted that counsel for the respondent

GAVE AS HIS REASON FOR SEEKING TO QUESTION THE WITNESSES THE FACT THAT THE CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT NOT ONLY CERTIFIED AS TO MEMBERSHIP BUT, IN ADDITION, CONTAINED AN AUTHORIZATION TO THE APPLICANT TO BARGAIN ON BEHALF OF THE PERSON SIGNING THE CERTIFICATES. COUNSEL SOUGHT AN IMMEDIATE RULING BY THE BOARD AS TO WHETHER THE BOARD INTENDED TO GIVE WEIGHT TO SUCH AUTHORIZATION. THE BOARD REFUSED TO MAKE ANY SUCH RULING AT THAT STAGE OF THE HEARING. WE SHOULD, PERHAPS, NOW MAKE IT CLEAR THAT WHEN THE BOARD IS CONSIDERING AN APPLICANT UNION'S EVIDENCE FILED IN SUPPORT OF AN APPLICATION FOR CERTIFI-CATION. MEMBERSHIP AND NOT AN AUTHORIZATION BY A PERSON TO A UNION TO ACT ON HIS BEHALF IS THE ISSUE BEFORE THE BOARD. UNDER THE PROVISIONS OF SECTION 7 OF THE ACT, THE BOARD MUST BE SATISFIED THAT EMPLOYEES "ARE MEMBERS OF THE TRADE UNION". A SIMPLE AUTHORIZATION TO ACT HAS NEVER BEEN ACCEPTED BY THE BOARD AS EVIDENCE OF MEMBERSHIP. SIMILARLY, THE FACT THAT DOCUMENTARY EVIDENCE OF MEMBERSHIP CONTAINS, IN ADDITION, AN AUTHORIZATION TO ACT IS OF NO PARTICULAR CONSEQUENCES TO THE BOARD. WHAT AN APPLICANT UNION MUST SHOW IS THAT IT HAS AS MEMBERS A CERTAIN PERCENTAGE OF EMPLOYEES IN THE BARGAINING UNIT. OF COURSE. AS WE HAVE INDICATED ABOVE, IF SUBSEQUENTLY AN EMPLOYEE FILES WITH THE BOARD A WRITTEN STATEMENT INDICATING OPPOSITION TO THE APPLICATION, THIS IS A MATTER WHICH IS OF CONCERN TO THE BOARD.

Counsel for the respondent also sought to question the 4 witnesses about certain matters which took place when the employees signed the certificates of membership. These matters related to the place where the signing took place and whether the employees were paid by the respondent for the time they took off. The Board ultimately permitted the questions to be answered, there being no objection by the applicant. However, counsel for the respondent made no reference to this evidence in his final submissions to the Board and we, ourselves, are unable to appreciate what counsel sought to achieve by pursuing that line of questioning.

WE TURN NOW TO A CONSIDERATION OF THE EVIDENCE BEFORE US HAVING REGARD TO THE POLICIES AND PROCEDURES AS DESCRIBED ABOVE. ON THE ONE HAND WE HAVE CLEAR DOCUMENTARY EVIDENCE IN THE FORM OF CERTIFICATES OF MEMBERSHIP THAT 9 OF THE 15 EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION WERE MEMBERS OF THE APPLICANT TRADE UNION. SEVEN OF THE 9 PERSONS WERE MEMBERS OF LONG STANDING AND THE OTHER TWO WERE MEMBERS OF AT LEAST A YEAR'S STANDING. ON THE OTHER HAND, WE HAVE 4 OF THE SAID 9 PERSONS SUBMITTING DOCUMENTS INDICATING THAT THEY DID NOT WANT THE APPLICANT TO ACT FOR THEM AS THEIR BARGAINING AGENT WITH THE RESPONDENT. THREE OF THE 4 PERSONS ALSO STATED IN THE DOCUMENTS THAT THEY HAD SIGNED THE CERTIFICATES WITHOUT CAREFULLY READING THEM AND SUGGESTED, FURTHER, THEY WERE NOT INFORMED OF CONSEQUENCES THAT MIGHT FLOW FROM SIGNING THE CERTIFICATES. THE QUESTION IS WHAT WEIGHT SHOULD

#### ATTACH TO THE 4 DOCUMENTS?

WHILE WE DO NOT INTEND TO REVIEW IN DETAIL THE EVIDENCE BEFORE US RELATING TO ORIGINATION OF THE DOCUMENTS OR THE METHOD IN WHICH THE SIGNATURES ON THEM WERE OBTAINED, THERE ARE CERTAIN MATTERS, IN OUR OPINION, EMERGING FROM THAT EVIDENCE THAT DESERVE SPECIAL MENTION. ON THE DAY THE 4 EMPLOYEES IN QUESTION SIGNED THE DOCUMENTS, 2 OF THEM, WORKING CARPENTER FOREMEN, RECEIVED TELEPHONE CALLS WHILE AT WORK FROM A DONAT POIRIER TELLING THEM THAT A MEETING WAS GOING TO BE HELD. ONE OF THE TWO RECEIVING A CALL TESTIFIED THAT POIRIER TOLD HIM THAT THE PURPOSE OF THE MEETING WAS "TO TRY TO PREVENT THE UNION FROM COMING IN". POIRIER ALSO TOLD HIM THAT THE MEN WOULD BE PAID FOR THEIR TIME. THE OTHER 2 EMPLOYEES ACCOMPANIED THESE 2 FOREMEN TO THE MEETING. ONE OF THE EMPLOYEES SAID HIS FOREMAN TOLD HIM "WE HAD TO GO THERE", WHILE THE OTHER SAID HE WENT "BECAUSE OF ORDERS OF THE FOREMAN". THE MEETING WAS HELD DURING WORKING HOURS IN AN OFFICE LOCATED IN THE SAME BUILDING AS, BUT BEHIND, THE RESPONDENT'S OFFICES. ACCORDING TO ONE WITNESS. THE RESPONDENT HAD RENTED THE OFFICE. IT WOULD APPEAR THAT MOST OF THE CARPENTERS EMPLOYED BY THE RESPONDENT ATTENDED THE MEETING WHICH LASTED FROM 12 TO 2 HOURS. THE EVIDENCE FROM 3 OF THE WITNESSES IS THAT THEY WERE NOT DOCKED ANY WAGES FOR THE PERIOD. THE FOURTH TOLD THE BOARD THAT HE HAD NOT CHECKED INTO THE MATTER. AT THE MEETING BOTH POIRIER AND ALCIDE THELLEND, THE VICE-PRESIDENT OF THE RESPONDENT COMPANY, SPOKE TO THE ASEMBLED GROUP. A TAPE RECORDER WAS USED TO RECORD SOME OF THE PROCEEDINGS. IT IS CLEAR TO US FROM STATE-MENTS BY COUNSEL FOR THE RESPONDENT DURING ARGUMENT THAT IT MUST HAVE BEEN A COMPANY MACHINE. ALTHOUGH THELLEND SPOKE FOR SOME TEN MINUTES, THE 4 WITNESSES STATED THEY COULD NOT REMEMBER WHAT HE SPOKE ABOUT EXCEPT TO SAY THAT HE SAID, IN EFFECT, IT WAS UP TO THE EMPLOYEES. HE DID, HOWEVER, ACCORDING TO ONE WITNESS, REFER TO THE DOCUMENTS WHICH WERE SUBSEQUENTLY PRODUCED. POIRIER ALSO SPOKE AND AGAIN THE WITNESSES SAID THEY COULD REMEMBER VERY LITTLE OF WHAT WAS SAID. SUBSEQUENTLY, THE DOCUMENTS IN QUESTION WERE PRODUCED BY POIRIER. NONE OF THE 4 WITNESSES HAD ANY KNOWLEDGE AS TO WHO HAD PREPARED THEM. ONE WITNESS TESTIFIED FURTHER, THAT THE ONLY THING HE KNEW ABOUT THEM WAS THAT THEY WERE GOING TO BE SENT TO TORONTO BY THE RESPONDENT. OTHERS TESTIFIED THAT THEY LEFT THEM WITH POIRIER TO SEND TO TORONTO. THE WITNESSES ALL STATED THAT THEY COULD NOT RECALL A SIMILAR MEETING EVER HAVING BEEN HELD. THE RESPONDENT CALLED NO EVIDENCE RESPECTING THESE MATTERS ALTHOUGH DURING ARGUMENT COUNSEL FOR THE RESPONDENT, AFTER HEAR-ING THE APPLICANT'S SUBMISSIONS, SUGGESTED THAT IF THE BOARD WISHED TO HEAR THE TAPE RECORDER HE WOULD MAKE IT AVAILABLE. COUNSEL WAS REMINDED THAT THE PARTIES HAD CLOSED THEIR CASES AND IT WAS POINTED OUT TO HIM, FURTHER, THAT IT WAS NOT UP TO THE BOARD TO DECIDE WHAT EVIDENCE A PARTY SHOULD ADDUCE. POIRIER, A WITNESS TO 11 OF THE 12 SIGNATURES ON THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION AND A PERSONS WHO OBVIOUSLY PLAYED A LEADING ROLE IN THE EVENTS JUST DESCRIBED, DECLINED

TO TESTIFY WHEN ASKED WHETHER HE WISHED TO DO SO. WE WOULD ADD THAT IN EXAMINING THE ROLE PLAYED BY POIRIER WE ARE SATISFIED THAT, ALTHOUGH THE PARTIES AGREED TO HIS INCLUSION IN THE BARGAINING UNIT, THE FOUR PERSONS WHO FILED WRITTEN STATEMENTS OF OBJECTION AND WHO TESTIFIED WITH RESPECT THERETO, WOULD REGARD HIM AS A PERSON WHO POSSESSED POWER TO AFFECT THEIR EMPLOYMENT STATUS. (SEE LINK MANUFACTURING CASE, FOOTNOTE TO KAYSON AND RUBBER PLASTIC LTD., (1958) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, '55-'59, ¶16,128, C.L.S. 76-627.)

FURTHERMORE, AT THE VERY LEAST, THE EVIDENCE ESTABLISHES THAT IF THE RESPONDENT WAS NOT THE INSTIGATOR OF THE MEETING AND THE DOCUMENTS PRODUCED THEREAT, THE 4 EMPLOYEES WITH WHOM WE ARE CONCERNED WOULD BE LED TO BELIEVE THAT THE RESPONDENT NOT ONLY WAS AWARE OF THE MEETING AND ITS PURPOSE BUT, IN ADDITION, GAVE ITS TACIT, INDEED, ITS EXPRESS APPROVAL THERETO.

AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE BEFORE US, THE DEMEANOUR OF THE WITNESSES AND THE REPRESENTATIONS OF THE PARTIES, WE ARE NOT PREPARED TO FIND THAT THE DOCUMENTARY EVIDENCE FILED IN OPPOSITION TO THE APPLICATION REFLECTS THE FREE AND VOLUNARY WISHES OF THE EMPLOYEES, UNINFLUENCED BY ANY INTERFERENCE. SUPPORT OR ASSISTANCE ON THE PART OF MANAGEMENT. FURTHERMORE, ALTHOUGH IT MAY NOT BE NECESSARY TO GO THIS FAR. HAVING REGARD TO WHAT HAS GONE BEFORE, WE WOULD ADD THAT WE CANNOT ACCEPT THE TESTIMONY OF THE WITNESSES WHO STATED THAT THEY DID NOT REALIZE THE FULL IMPACT OF THE CERTIFICATES OF MEMBERSHIP WHICH THEY HAD SIGNED. IN THE RESULT, THEREFORE, WE ARE UNABLE TO HOLD THAT THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION WEAKEN THE APPLICANT'S EVIDENCE OF MEMBERSHIP SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. (SEE BULK-LIFT SYSTEMS CASE, O.L.R.B. MONTHLY REPORT, MARCH 1961, p. 431; FLECK MANUFACTURING CASE, (1962), 62 C.L.L.C. ¶16,236, C.L.S. 76-860.)."

10841-65-R: United Steelworkers of America (Applicant) v. Neelon Steel Limited (Respondent) v. The Sudbury and District General Workers' Union Local 902 of the International Union of Mine, Mill and Smelter Workers (Intervener).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an Application for Certification wherein the Board on September 30th, 1965, directed that a pre-hearing representation vote be taken among all employees of the respondent at Sudbury with Certain exceptions not here relevant.

AT THE PRE-HEARING VOTE MEETING GERRY COTE, A RANK AND FILE EMPLOYEE OF THE RESPONDENT, WAS APPOINTED BY THE APPLICANT AS SCRUTINEER. A. SOUTHGATE, THE PLANT MANAGER OF THE RESPONDENT, WAS APPOINTED BY THE RESPONDENT AS SCRUTINEER AND R. A. LACHANCE, THE PRESIDENT AND BUSINESS AGENT OF THE INTERVENER, WAS APPOINTED

BY THE INTERVENER AS SCRUTINEER.

The parties also agreed that the agents representing the parties at the count would be as follows: A. Desbiens, Business Representative of the applicant, Gerry Cote and George Grubb, a former employee of the respondent and a paid organizer of the applicant, were appointed to represent the applicant; A. Southgate, and L. Valin, Q.C., or R. T. Runciman, solicitors for the respondent were appointed to represent the respondent; R. A. Lachance, M. Farrell and/or W. Kennedy were appointed to represent the intervener.

THE PARTIES FURTHER AGREED THAT THE VOTE WOULD TAKE PLACE AT THE RESPONDENT'S OFFICE BETWEEN THE HOURS OF 6:30 A.M. AND 7:30 A.M. AND THE HOURS OF 3:30 P.M. AND 4:00 P.M. ON OCTOBER 14TH, 1965.

ON THE MORNING OF OCTOBER 14TH, IMMEDIATELY PRIOR TO THE OPENING OF THE POLL AT 6:30 A.M., THERE APPEARED AT THE PLACE OF THE POLL KEN SIGNIORETTI, A REPRESENTATIVE OF THE APPLICANT WHO REGULARLY DID A FIVE MINUTE TELEVISION NEWS-CAST ON BEHALF OF THE APPLICANT, MR. COTE, MR. GRUBB AND MR. DESBIENS. THE RESPONDENT WAS REPRESENTED BY MR. SOUTHGATE AND THE INTERVENER WAS REPRESENTED BY R. A. LACHANCE. NO OBJECTION WAS MADE BY THE INTERVENER OR THE RESPONDENT TO THE PRESENCE OF THE FOUR PERSONS REPRESENTING THE APPLICANT PRIOR TO THE OPENING OF THE POLL. MR. DESBIENS VOLUNTEERED TO GO AND PURCHASE A CUP OF COFFEE FOR EACH OF THE PERSONS PRESENT AND FOR THIS PURPOSE HE LEFT THE RESPONDENT'S PREMISES. SHORTLY AFTER MR. DESBIENS LEFT TO BUY THE COFFEE, THE RETURNING OFFICER ARRIVED AND THE POLL WAS OPENED.

MR. SIGNIORETTI AND MR. GRUBB SAT IN CORNERS OF THE ROOM IN POSITIONS WHERE THEY WOULD BE VISIBLE TO THE PERSONS APPROACHING THE TABLE WHERE THE RETURNING OFFICER AND SCRUTINEERS SAT.

MR. LACHANCE, ON BEHALF OF THE INTERVENER, OBJECTED TO THE PRESENCE OF MR. SIGNIORETTI AND MR. GRUBB AND WHILE HIS OBJECTION WAS MADE KNOWN TO THE RETURNING OFFICER, BOTH MR. GRUBB AND MR. SIGNIORETTE TESTIFIED THAT THEY HAD NO KNOWLEDGE THAT THE OBJECTION WAS MADE. THE RETURNING OFFICER FAILED TO COMMUNICATE THE OBJECTION TO MR. SIGNIORETTI AND MR. GRUBB. THE RETURNING OFFICER ADVISED MR. LACHANCE THAT BECAUSE MR. LACHANCE WAS A PAID OFFICIAL OF THE INTERVENER HE COULD NOT OBJECT TO THE PRESENCE AT THE POLL OF PAID OFFICIALS OF THE APPLICANT.

APPROXIMATELY TEN MINUTES AFTER THE POLL WAS OPENED, DURING WHICH TIME THIRTEEN EMPLOYEES VOTED, MR. DESBIENS RETURNED WITH THE COFFEE AND AFTER DISTRIBUTING A CUP OF COFFEE TO EACH OF THE PERSONS PRESENT, MR. DESBIENS AND MR. SIGNIORETTI LEFT THE POLLING AREA AND WENT OUTSIDE THE RESPONDENT'S OFFICE WHERE THEY SAT IN MR. DESBIENS AUTOMOBILE UNTIL AFTER 7:30 A.M. WHEN THE MORNING POLL WAS COMPLETED. THE EVIDENCE INDICATES THAT MR. DESBIENS' CAR WAS PARKED IN A DARK AREA (IT NOT YET BEING DAYLIGHT) TO ONE SIDE OF

THE ENTRANCE TO THE OFFICE AT A DISTANCE OF BETWEN 25 TO 50 FEET FROM THE OFFICE DOOR.

THERE IS NO EVIDENCE THAT EITHER MR. DESBIENS, MR. COTE, MP. SIGNIORETTI OR MR. GRUBB SPOKE TO ANY OF THE PERSONS WHO ATTENDED AT THE POLL EXCEPT TO BID THEM GOOD MORNING OR TO ACKNOWLEDGE THEIR PRESENCE WITH A WAVE.

IMMEDIATELY PRIOR TO THE OPENING OF THE POLL AT 3:30 P.M. ON OCTOBER 14TH, MR. LACHANCE AGAIN TOOK EXCEPTION TO THE PRESENCE OF MR. DESBIENS, MR. SIGNIORETTI AND MR. GRUBB. HOWEVER, THIS TIME THE APPLICANT'S REPRESENTATIVES OVERHEARD THE OBJECTION AND IMMEDIATELY VOLUNTEERED TO ABSENT THEMSELVES FROM THE POLLING AREA PRIOR TO THE OPENING OF THE POLL.

ON THE TAKING OF THE REPRESENTATION VOTE THERE WERE 31 EMPLOYEES ON THE REVISED VOTERS' LIST, 29 OF WHOM VOTED IN FAVOUR OF THE APPLICANT AND 2 VOTED IN FAVOUR OF THE INTERVENER.

THE INTERVENER ARGUED THAT THE MERE PRESENCE OF REPRESENTATIVES OF THE APPLICANT OTHER THAN THE OFFICIAL SCRUTINEER SHOULD BE CONSTRUED BY THE BOARD AS ELECTIONEERING BY THE APPLICANT IN CONTRAVENTION OF THE REGISTRAR'S DIRECTION PROHIBITING ELECTIONEERING AND PROPAGANDA DURING THE 72 HOUR "QUIET PERIOD" IMMEDIATELY PRECEEDING THE TAKING OF THE VOTE.

While the Board does not condone the failure of its Returning Officer to bring the intervener's objection to the attention of Mr. Significant and Mr. Grubb, the Board is of opinion that such failure in the circumstances of this case has not prevented the employees from indicating their true wishes in the representation vote. While we are of opinion that the Returning Officer should have excluded from the polling area all persons not directly involved with the conduct of the vote, in order to remove the temptation to engaged in electioneering and propaganda, we find, in the circumstances of this case, that no electioneering or propaganda took place in the polling area.

Moreover, in the absence of evidence that the applicant's representatives made statements to the employees which could be construed as electioneering or proganganda and in the absence of evidence from which we could infer that their presence did in fact unduly influence the voters, we are not prepared to find, in the circumstances of this case, that the mere presence of representatives of any of the parties, of itself, would prevent the employees from indicating their true wishes on the ballots. In arriving at this conclusion we have taken into account the fact that the intervener's scrutineer was the President and Business Agent of the intervener, and would be recognized as such by the employees in the bargaining linit.

Even if the Board were to find that Mr. Signioretti's presence might have reasonably prevented the employees from indicating their true wishes and if the Board were to discount the 13 ballots

CAST WHILE HE WAS IN THE POLLING AREA, MORE THAN FIFTY PER CENT OF THE TOTAL BALLOTS WERE STILL CAST IN FAVOUR OF THE APPLICANT.

THE BOARD ACCORDIGLY FINDS THAT THE RESULT OF THE REPRESENTATION VOTE IN THIS CASE CORRECTLY REFLECTS THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT AND THERE IS THEREFORE NO REASON THAT A NEW REPRESENTATION VOTE SHOULD BE DIRECTED."

## INDEXED ENDORSEMENTS - SECTION 79A

10808-65-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 641 (TRADE UNION) v. LAWSON-MCMULLEN-VICTORIA LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION WHETHER THE TRADE UNION IN THIS MATTER IS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOY PURSUANT TO SECTION 47A OF THE ACT.

THE EVIDENCE IN THIS MATTER, ON WHICH THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES, IS THAT THREE COMPANIES CAUSED A FOURTH COMPANY TO BE FORMED AND ALL OR PART OF THE BUSINESSES CARRIED ON BY THE ORIGINAL THREE COMPANIES WERE SOLD TO THE NEW COMPANY.

FOR THE PURPOSES OF THIS DECISION THE ORIGINAL THREE COMPANIES WILL BE REFERRED TO AS COMPANY A, COMPANY B AND COMPANY C AND THE NEW COMPANY WHICH WAS FORMED AND WHICH IS THE EMPLOYER IN THIS MATTER WILL BE REFERRED TO AS THE EMPLOYER.

THE TRADE UNION HAD A COLLECTIVE BARGAINING RELATIONSHIP, PRIOR TO THE SALE OF THE BUSINESS, WITH COMPANY A FOR ALL OF ITS EMPLOYEES WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THERE WAS NO COLLECTIVE BARGAINING RELATIONSHIP WITH RESPECT TO ANY OF THE EMPLOYEES OF COMPANY B OR COMPANY C.

WHEN THE EMPLOYER PURCHASED THE BUSINESS OF COMPANIES A, B AND C THE NEW BUSINESS, WITH WHICH WE ARE HERE CONCERNED, WAS CARRIED ON AT 1580 MICHAEL STREET, OTTAWA. PARTS OF THE BUSINESSES OF COMPANY B AND COMPANY C WERE TO BE CARRIED ON BY THE EMPLOYER AT ANOTHER ADDRESS IN OTTAWA. HOWEVER, FOR PRESENT PURPOSES WE ARE NOT CONCERNED WITH ANY BUSINESS CARRIED ON BY THE EMPLOYER OTHER THAN THE BUSINESS CARRIED ON AT THE MICHAEL STREET ADDRESS.

THE EMPLOYER OBTAINED ITS LETTERS PATENT OF INCORPORATION SOME TIME IN NOVEMBER, 1964, AND COMPANIES A, B AND C ENTERED INTO

AGREEMENTS WITH THE EMPLOYER FOR THE SALE OF THEIR BUSINESSES ON THE FIRST DAY OF MARCH, 1965. THE ACTUAL TRANSFER OF OPERATIONS TO THE MICHAEL STREET ADDRESS DID NOT COMMENCE UNTIL THE FIRST WEEK OF JUNE, 1965, ALL TWENTY OF THE EMPLOYEES OF COMPANY A WERE TRANSFERRED TO THE MICHAEL STREET ADDRESS. HOWEVER, ONLY ONE OR TWO EMPLOYEES FROM COMPANY B AND COMPANY C WERE TRANSFERRED AT THAT TIME. THE EMPLOYEES OF COMPANIES B AND C WERE PHASED INTO THE OPERATIONS AT THE MICHAEL STREET ADDRESS OVER A PERIOD OF APPROXIMATELY TWO MONTHS. WHEN THE TRANSFERS WERE COMPLETED TWENTY EMPLOYEES WERE TRANSFERRED FROM COMPANY C.

THE TRADE UNION BECAME AWARE OF THE PROPOSED SALE SOME TIME DURING THE MONTH OF FEBRUARY, 1965, AND SHORTLY THEREAFTER CONVERSATIONS TOOK PLACE BETWEEN MR. MILNES, THE FORMER PRESIDENT OF COMPANY A WHO WAS LATER TO BECOME THE GENERAL MANAGER OF THE EMPLOYER IN THIS MATTER, CONCERNING THE COLLECTIVE BARGAINING RIGHTS OF THE TRADE UNION. SUBSEQUENTLY, ON MAY 11TH, 1965, THE TRADE UNION WROTE TO MR. MILNES WHEREIN THE MATTER OF REPRESEN-TATION WAS DEALT WITH. A QUESTION WAS POSED IN THIS LETTER IN THE FOLLOWING FORM "HOW DOES SECTION 47A APPLY IN THE CASE WHERE A MERGER TAKES PLACE BETWEEN ONE COMPANY WITH WHICH THE U.A.W. HAS A COLLECTIVE AGREEMENT AND TWO OTHER COMPANIES WHERE THERE HAS NEVER BEEN A COLLECTIVE BARGAINING ARRANGEMENT"? THE TRADE UNION ADOPTED A POSITION IN THIS LETTER THAT IT WOULD BE PROPER FOR IT TO ATTEMPT TO BARGAIN WITH THE COMPANY AND IF THE COMPANY CHALLENGED THE TRADE UNION'S RIGHT TO BARGAIN ON THE GROUNDS THAT IT WAS NO LONGER THE BARGAINING AGENT FOR THE EMPLOYEES OF THE NEW COMPANY. CONCILIATION SERVICES SHOULD BE APPLIED FOR. IN MAKING REFERENCE TO SECTION 47A OF THE ACT, THE TRADE UNION STATED IN ITS LETTER THAT, "IF THERE IS A SALE OF A BUSINESS-AND THE TERM SALE IS DEFINED SO AS TO INCLUDE A TRANSFER OR OTHER DISPOSITION OF A BUSINESS OR PART OR PARTS OF A BUSINESS-THE SUCCESSOR EMPLOYER IS AUTOMATICALLY OBLIGATED TO BARGAIN WITH THE UNION THAT HAD BARGAINING RIGHTS FOR THE EMPLOYEES OF THE PREDECESSOR EMPLOYER, PROVIDED THAT THE UNION SERVES UPON THE SUCCESSOR EMPLOYER NOTICE OF ITS DESIRE TO BARGAIN."

AS INDICATED EARLIER, THE TRADE UNION WAS A PARTY TO A COLLECTIVE AGREEMENT WITH COMPANY A COVERING "ALL EMPLOYEE".

ON APRIL 29TH, 1965, THE TRADE UNION SERVED A NOTICE OF BARGAIN-ING ON MR. MILNES AND ENCLOSED PROPOSED AMENDMENTS IN WRITING TO THE PRE-EXISTING COLLECTIVE AGREEMENT WHICH IT HAD WITH COMPANY A. THE FIRST PROPOSED AMENDMENT WAS TO SUBSTITUTE THE NAME OF THE EMPLOYER IN THIS MATTER FOR THE NAME OF COMPANY A WHICH HAD APPEARED IN THE PREVIOUS COLLECTIVE AGREEMENT.

FOLLOWING THE TRANSFER OF THE EMPLOYEES OF COMPANY A TO THE MICHAEL STREET ADDRESS, THE EMPLOYER CONTINUED TO HONOUR THEIR DUES DEDUCTION AUTHORIZATION CARDS AND TO REMIT THE DUES TO THE TRADE UNION.

FOUR MEETINGS WERE HELD BETWEEN THE TRADE UNION AND THE EMPLOYER AT THE MICHAEL STREET ADDRESS TO NEGOTIATE A NEW COLLECTIVE AGREEMENT. THE FIRST MEETING WAS HELD ON JUNE 9TH. 1965. WHILE THERE MAY NOT HAVE BEEN ANY FORMAL AGREEMENT WITH RESPECT TO ANY OF THE MATTERS NEGOTIATED, IT WOULD APPEAR FROM THE EVIDENCE THAT THE PARTIES AGREED TO SUBSTITUTE THE NAME OF THE EMPLOYER IN THIS MATTER AS A PARTY TO THE COLLECTIVE AGREE-MENT. A TENTATIVE UNDERSTANDING WAS ALSO REACHED THAT THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT SHOULD READ IN PART "ALL EMPLOYEES OF THE EMPLOYER AT 1580 MICHAEL STREET, OTTAWA". THE EMPLOYER INSISTED THAT THE ADDRESS BE INCLUDED IN THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT BECAUSE WHILE THE COLLECTIVE AGREEMENT WOULD COVER EMPLOYEES ENGAGED IN THE MACHINE SHOP OPERATIONS OF THE EMPLOYER AT THE MICHAEL STREET ADDRESS. THE EMPLOYER HAD EMPLOYEES ENGAGED IN FOUNDRY OPERATIONS AT SOME OTHER ADDRESS IN OTTAWA FOR WHOM THE TRADE UNION WAS NOT CLAIMING BARGAINING RIGHTS.

THE TRADE UNION PROPOSED THAT A "TRANSFER OF OPERATIONS CLAUSE" BE INCLUDED IN THE COLLECTIVE AGREEMENT. THE EMPLOYER HOWEVER, DID NOT AGREE TO THIS PROPOSAL AT THE FIRST MEETING. ANOTHER MATTER DISCUSSED AT THE FIRST MEETING WAS THE SENIORITY RIGHTS OF EMPLOYEES WHO WOULD BE TRANSFERRED FROM COMPANIES B AND C. THE UNION PROPOSED THAT THEIR SENIORITY BE DATED FROM THE DATE OF THEIR ORIGINAL EMPLOYMENT WITH THEIR RESPECTIVE COMPANIES. THIS PROPOSAL MET WITH THE AGREEMENT OF THE EMPLOYER.

A SECOND MEETING WAS HELD AT THE MICHAEL STREET ADDRESS OF THE EMPLOYER ON JUNE 15TH, 1965, WHERE AMONG OTHER THINGS, THE TRANSFER OF OPERATIONS CLAUSE WAS AGAIN NEGOTIATED.

A THIRD MEETING WAS HELD AT THE MICHAEL STREET ADDRESS OF THE EMPLOYER ON JUNE 29TH, 1965, AT WHICH BARGAINING TOOK PLACE. FINALLY A FOURTH MEETING WAS HELD AT THE MICHAEL STREET PREMISES OF THE EMPLOYER ON JULY 8TH, 1965, WHERE BARGAINING AGAIN TOOK PLACE.

MR. MILNES TESTIFIED THAT ALTHOUGH HE ORIGINALLY QUESTIONED THE TRADE UNION'S RIGHT TO REPRESENT SOME OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, HE AT NO TIME, FOLLOWING THE TRADE UNION'S LETTER OF MAY 11TH, 1965, CHALLENGED THE POSITION TAKEN BY THE TRADE UNION THAT IT HAD THE RIGHT UNDER SECTION 47A, TO REPRESENT "ALL THE EMPLOYEES" AT THE MICHAEL STREET ADDRESS. WHILE MR. MILNES TESTIFIED THAT IN HIS MIND HE CONTINUED TO QUESTION THE RIGHT OF THE TRADE UNION TO REPRESENT "ALL EMPLOYEES", HE NEVER COMMUNICATED WHAT WAS IN HIS MIND TO THE TRADE UNION DURING THE COURSE OF THE FOUR BARGAINING MEETINGS AT WHICH TIME TENTATIVE AGREEMENT WAS REACHED ON THE DESCRIPTION OF THE "ALL EMPLOYEE" BARGAINING UNIT. INDEED THE EMPLOYER GAVE FURTHER TENTATIVE AGREEMENT AT THESE MEETINGS TO SUCH MATTERS AS SENIORITY, WHICH WELL COULD HAVE BEEN A CONTENTIOUS ISSUE IN A CASE OF INTERMINGLED EMPLOYEES FROM DIFFERENT COMPANIES.

AGREEMENTS WITH THE EMPLOYER FOR THE SALE OF THEIR BUSINESSES ON THE FIRST DAY OF MARCH, 1965. THE ACTUAL TRANSFER OF OPERATIONS TO THE MICHAEL STREET ADDRESS DID NOT COMMENCE UNTIL THE FIRST WEEK OF JUNE, 1965. BY THE END OF THE FIRST WEEK OF JUNE, 1965, ALL TWENTY OF THE EMPLOYEES OF COMPANY A WERE TRANSFERRED TO THE MICHAEL STREET ADDRESS. HOWEVER, ONLY ONE OR TWO EMPLOYEES FROM COMPANY B AND COMPANY C WERE TRANSFERRED AT THAT TIME. THE EMPLOYEES OF COMPANIES B AND C WERE PHASED INTO THE OPERATIONS AT THE MICHAEL STREET ADDRESS OVER A PERIOD OF APPROXIMATELY TWO MONTHS. WHEN THE TRANSFERS WERE COMPLETED TWENTY EMPLOYEES WERE TRANSFERRED FROM COMPANY B AND EIGHT FROM COMPANY C.

THE TRADE UNION BECAME AWARE OF THE PROPOSED SALE SOME TIME DURING THE MONTH OF FEBRUARY, 1965, AND SHORTLY THEREAFTER CONVERSATIONS TOOK PLACE BETWEEN MR. MILNES, THE FORMER PRESIDENT OF COMPANY A WHO WAS LATER TO BECOME THE GENERAL MANAGER OF THE EMPLOYER IN THIS MATTER. CONCERNING THE COLLECTIVE BARGAINING RIGHTS OF THE TRADE UNION. SUBSEQUENTLY, ON MAY 11TH, 1965, THE TRADE UNION WROTE TO MR. MILNES WHEREIN THE MATTER OF REPRESEN-TATION WAS DEALT WITH. A QUESTION WAS POSED IN THIS LETTER IN THE FOLLOWING FORM "HOW DOES SECTION 47A APPLY IN THE CASE WHERE A MERGER TAKES PLACE BETWEEN ONE COMPANY WITH WHICH THE U.A.W. HAS A COLLECTIVE AGREEMENT AND TWO OTHER COMPANIES WHERE THERE HAS NEVER BEEN A COLLECTIVE BARGAINING ARRANGEMENT"? THE TRADE UNION ADOPTED A POSITION IN THIS LETTER THAT IT WOULD BE PROPER FOR IT TO ATTEMPT TO BARGAIN WITH THE COMPANY AND IF THE COMPANY CHALLENGED THE TRADE UNION'S RIGHT TO BARGAIN ON THE GROUNDS THAT IT WAS NO LONGER THE BARGAINING AGENT FOR THE EMPLOYEES OF THE NEW COMPANY. CONCILIATION SERVICES SHOULD BE APPLIED FOR. IN MAKING REFERENCE TO SECTION 47A OF THE ACT, THE TRADE UNION STATED IN ITS LETTER THAT, "IF THERE IS A SALE OF A BUSINESS-AND THE TERM SALE IS DEFINED SO AS TO INCLUDE A TRANSFER OR OTHER DISPOSITION OF A BUSINESS OR PART OR PARTS OF A BUSINESS-THE SUCCESSOR EMPLOYER IS AUTOMATICALLY OBLIGATED TO BARGAIN WITH THE UNION THAT HAD BARGAINING RIGHTS FOR THE EMPLOYEES OF THE PREDECESSOR EMPLOYER. PROVIDED THAT THE UNION SERVES UPON THE SUCCESSOR EMPLOYER NOTICE OF ITS DESIRE TO BARGAIN."

AS INDICATED EARLIER, THE TRADE UNION WAS A PARTY TO A COLLECTIVE AGREEMENT WITH COMPANY A COVERING "ALL EMPLOYEE". ON APRIL 29th, 1965, THE TRADE UNION SERVED A NOTICE OF BARGAINING ON MR. MILNES AND ENCLOSED PROPOSED AMENDMENTS IN WRITING TO THE PRE-EXISTING COLLECTIVE AGREEMENT WHICH IT HAD WITH COMPANY A. THE FIRST PROPOSED AMENDMENT WAS TO SUBSTITUTE THE NAME OF THE EMPLOYER IN THIS MATTER FOR THE NAME OF COMPANY A WHICH HAD APPEARED IN THE PREVIOUS COLLECTIVE AGREEMENT.

FOLLOWING THE TRANSFER OF THE EMPLOYEES OF COMPANY A TO THE MICHAEL STREET ADDRESS, THE EMPLOYER CONTINUED TO HONOUR THEIR DUES DEDUCTION AUTHORIZATION CARDS AND TO REMIT THE DUES TO THE TRADE UNION.

FOUR MEETINGS WERE HELD BETWEEN THE TRADE UNION AND THE EMPLOYER AT THE MICHAEL STREET ADDRESS TO NEGOTIATE A NEW COLLECTIVE AGREEMENT. THE FIRST MEETING WAS HELD ON JUNE 9TH. 1965. WHILE THERE MAY NOT HAVE BEEN ANY FORMAL AGREEMENT WITH RESPECT TO ANY OF THE MATTERS NEGOTIATED, IT WOULD APPEAR FROM THE EVIDENCE THAT THE PARTIES AGREED TO SUBSTITUTE THE NAME OF THE EMPLOYER IN THIS MATTER AS A PARTY TO THE COLLECTIVE AGREE-MENT. A TENTATIVE UNDERSTANDING WAS ALSO REACHED THAT THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT SHOULD READ IN PART "ALL EMPLOYEES OF THE EMPLOYER AT 1580 MICHAEL STREET, OTTAWA". THE EMPLOYER INSISTED THAT THE ADDRESS BE INCLUDED IN THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT BECAUSE WHILE THE COLLECTIVE AGREEMENT WOULD COVER EMPLOYEES ENGAGED IN THE MACHINE SHOP OPERATIONS OF THE EMPLOYER AT THE MICHAEL STREET ADDRESS, THE EMPLOYER HAD EMPLOYEES ENGAGED IN FOUNDRY OPERATIONS AT SOME OTHER ADDRESS IN OTTAWA FOR WHOM THE TRADE UNION WAS NOT CLAIMING BARGAINING RIGHTS.

THE TRADE UNION PROPOSED THAT A "TRANSFER OF OPERATIONS CLAUSE" BE INCLUDED IN THE COLLECTIVE AGREEMENT. THE EMPLOYER HOWEVER, DID NOT AGREE TO THIS PROPOSAL AT THE FIRST MEETING. ANOTHER MATTER DISCUSSED AT THE FIRST MEETING WAS THE SENIORITY RIGHTS OF EMPLOYEES WHO WOULD BE TRANSFERRED FROM COMPANIES B AND C. THE UNION PROPOSED THAT THEIR SENIORITY BE DATED FROM THE DATE OF THEIR ORIGINAL EMPLOYMENT WITH THEIR RESPECTIVE COMPANIES. THIS PROPOSAL MET WITH THE AGREEMENT OF THE EMPLOYER.

A SECOND MEETING WAS HELD AT THE MICHAEL STREET ADDRESS OF THE EMPLOYER ON JUNE 15TH, 1965, where among other things, the transfer of operations clause was again negotiated.

A THIRD MEETING WAS HELD AT THE MICHAEL STREET ADDRESS OF THE EMPLOYER ON JUNE 29TH, 1965, AT WHICH BARGAINING TOOK PLACE. FINALLY A FOURTH MEETING WAS HELD AT THE MICHAEL STREET PREMISES OF THE EMPLOYER ON JULY 8TH, 1965, WHERE BARGAINING AGAIN TOOK PLACE.

MR. MILNES TESTIFIED THAT ALTHOUGH HE ORIGINALLY QUESTIONED THE TRADE UNION'S RIGHT TO REPRESENT SOME OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, HE AT NO TIME, FOLLOWING THE TRADE UNION'S LETTER OF MAY 11TH, 1965, CHALLENGED THE POSITION TAKEN BY THE TRADE UNION THAT IT HAD THE RIGHT UNDER SECTION 47A, TO REPRESENT "ALL THE EMPLOYEES" AT THE MICHAEL STREET ADDRESS. WHILE MR. MILNES TESTIFIED THAT IN HIS MIND HE CONTINUED TO QUESTION THE RIGHT OF THE TRADE UNION TO REPRESENT "ALL EMPLOYEES", HE NEVER COMMUNICATED WHAT WAS IN HIS MIND TO THE TRADE UNION DURING THE COURSE OF THE FOUR BARGAINING MEETINGS AT WHICH TIME TENTATIVE AGREEMENT WAS REACHED ON THE DESCRIPTION OF THE "ALL EMPLOYEE" BARGAINING UNIT. INDEED THE EMPLOYER GAVE FURTHER TENTATIVE AGREEMENT AT THESE MEETINGS TO SUCH MATTERS AS SENIORITY, WHICH WELL COULD HAVE BEEN A CONTENTIOUS ISSUE IN A CASE OF INTERMINGLED EMPLOYEES FROM DIFFERENT COMPANIES.

The trade union and the employer entered into a collective agreement dated October 8th, 1956. The duration clause provided that the agreement was to be effective from August 9th, 1956 until August 8th, 1957 and from year to year thereafter subject to notice. While there is no direct evidence before us it appears that the trade union applied for and was granted conciliation services. By letter dated March 10th, 1959, which was filed with the Board, the trade union was informed that the Minister was not appointing a board of conciliation. Since the issuing of the report of the Minister no collective agreement has been entered into by the parties.

By LETTER DATED MAY 14TH. 1960, THE TRADE UNION REQUESTED THAT THE EMPLOYER MEET AND NEGOTIATE A NEW COLLECTIVE AGREEMENT. THE REPRESENTATIVE OF THE TRADE UNION WHO APPEARED AT THE HEARING INFORMED THE BOARD THAT SINCE THAT DATE, FROM TIME TO TIME DURING PERIODS WHEN THE EMPLOYER HAD CARPENTERS IN ITS EMPLOY, BUSINESS AGENTS OF THE TRADE UNION HAD COMMUNICATED WITH THE EMPLOYER BY LETTER AND BY TELEPHONE REQUESTING THE COMMENCEMENT OF NEGOTIATIONS. ACCORDING TO THE REPRESENTATIVE OF THE TRADE UNION, THE MOST RECENT REQUEST WAS MADE ON OCTOBER 5TH BUT THAT NO REPLY WAS RECEIVED FROM THE EMPLOYER. BY LETTER FROM THE EMPLOYER DATED OCTOBER 18TH, 1965 ADDRESSED TO THE DEPUTY MINISTER OF LABOUR (WHICH LETTER WAS ATTACHED TO THE MINISTER'S REFERENCE TO THE BOARD) THE EMPLOYER REQUESTS "DE- CERTIFICATION FOR OUR FIRM". THE EMPLOYER ALSO STATES IN ITS LETTER THAT FOUR YEARS PREVIOUSLY IT HAD BEEN PREPARED TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE TRADE UNION BUT THAT SINCE IT (THE EMPLOYER) COULD NOT AGREE WITH ONE OF THE TERMS SOUGHT BY THE TRADE UNION NO COLLECTIVE AGREEMENT WAS EXECUTED BY THE PARTIES. THE TRADE UNION BY APPLICATION DATED OCTOBER 19TH, 1965 REQUESTED THE MINISTER TO APPOINT A CONCILIATION OFFICER.

IN OUR VIEW, THE CONTENTS OF THE EMPLOYER'S LETTER OF OCTOBER 18th, 1965 INDICATES THAT THE EMPLOYER STILL RECOGNIZES THE TRADE UNION AS THE BARGAINING AGENT FOR THE CARPENTERS IN ITS EMPLOYE FURTHER, THE EVIDENCE SUBMITTED BY THE TRADE UNION AS TO THE EFFORTS WHICH IT HAS MADE TO BARGAIN WITH THE EMPLOYER SINCE 1960 IS NOT DISPUTED BY THE EMPLOYER. IN THESE CIRCUMSTANCES, WE FIND THAT THE TRADE UNION STILL RETAINS ITS BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT CONCERNED.

WE WOULD POINT OUT, HOWEVER, THAT THE TRADE UNION ALREADY HAS BEEN GRANTED CONCILIATION SERVICES AND THE REPORT OF THE MINISTER HAS BEEN RELEASED TO THE PARTIES. ACCORDINGLY, IN THE PRESENT CIRCUMSTANCES, CONCILIATION SERVICES ARE NOW ONLY AVAILABLE PURSUANT TO SECTION 13(4) OF THE ACT UPON THE JOINT REQUEST OF THE PARTIES. SINCE THE EMPLOYER DID NOT JOIN IN THE TRADE UNION'S REQUEST FOR CONCILIATION SERVICES WE ARE OF THE OPINION THAT THE TRADE UNION IS NOT ENTITLED TO THE APPOINTMENT OF A CONCILIATION OFFICER AT THIS TIME."

### TRUSTEESHIP REPORTS

- T-21-65

  UNITED STEELWORKERS OF AMERICA, LOCAL 5662, AT ELLIOT LAKE.

  REPORT FILED UNDER DATE OF OCTOBER 20, 1965, BY D.M. STOREY,

  LEGISLATIVE DIRECTOR, STATED THAT THE LOCAL HAD BEEN RE
  ORGANIZED AND WAS NO LONGER UNDER ADMINSTRATION.
- T-22-65

  HOTEL, CLUBS, RESTAURANTS, TAVERN EMPLOYEES, LOCAL 261, AT
  OTTAWA. REPORT FILED UNDER DATE OF NOVEMBER 15, 1965, BY
  ED. S. MILLER, GENERAL PRESIDENT, STATED THAT THE TRUSTEESHIP
  OVER THE LOCAL WAS TERMINATED AND ITS AUTONOMY HAS BEEN
  RESTORED.

## STATISTICAL TABLES FOR NOVEMBER 1965

TABLE | APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed		
				of Fiscal Year 1964-65
I.	CERTIFICATION	77	668	630
11.	DECLARATION TERMINATING BARGAINING RIGHTS	10	45	60
111.	Declaration of Successor Status	1	6	3
I V.	Declaration That Strike Unlawful	4	<b>3</b> 8	. 33
٧.	Declaration That Lock- Out Unlawful	1	. 3	5
V1.	CONSENT TO PROSECUTE	34	73	58
VII.	COMPLAINT OF UNFAIR			
	Practice in Employment (Section 65)	. 6	77	121
V111.	MISCELLANEOUS	5	<u>38</u>	_17
	TOTAL	138	<u>948</u>	<u>927</u>

## TABLE 11 HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	November 1965		F FISCAL YEAR 1964-65
Hearings and Continuation of Hearings by the Board	100	824	762

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

			NUMBER DISPOSED OF		
		November 1965	lst 8 Months o 1965-66	FISCAL YR. 1964-65	
1.	CERTIFICATION	74	673	589	
11.	DECLARATION TERMINATING BARGAINING RIGHTS	6	44	62	
111.	DECLARATION OF SUCCESSOR STATUS	-	9	6	
1 V •	Declaration That Strike Unlawful	2	33	33	
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	1	5	
VI.	Consent to Prosecute	10	42	57	
V11.	Complaint of Unfair Practice in Employment (Section 65)	7	78	124	
VIII.	MISCELLANEOUS	2	52	15	
	TOTAL	101	932	891	

TABLE IV

## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### BY TYPE AND DISPOSITION

			of Applica lst 8 Mths 1 1965-66				FISCAL YR.
1.	CERTIFICATION						
	GRANTED DISMISSED WITHDRAWN	60	502 115 56	438 95 56	1771 3353 47	13204 8244 3135	13896 4866 2273
	TOTAL	74	673	589	5171	24583	21035
11.	TERMINATION OF BARGAINING RIGHTS						
	GRANTED DISMISSED WITHDRAWN	1 4 1	18 23 3	40 20 2	26 212 46	1201 730 119	384 315 82
	TOTAL	6	44	62	284	2050	781

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			N	JMBER OF APPL	ICATIONS
				1st 8 Months 1965-66	
111.	DECLARATION THAT STRI UNLAWFUL GRANTED	KE	-	6	12
	Dismissed Withdrawn		2	24	5 16
		TOTAL	2	33	33
١٧.	DECLARATION THAT LOCK	COUT			
	GRANTED Dismissed Withdrawn		-	1	1 1 3
		TOTAL	-	1	5
٧.	CONSENT TO PROSECUTE				
	Granted Dismissed Withdrawn		2 1 7	8 5 29	11 11 35
		TOTAL	10	42	57

TABLE V

## REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

### OF BY THE ONTARIO LABOUR RELATIONS BOARD

		Number of Volation Number of Number of Volation Number of Number	FISCAL YEAR
CERTIFICATION AFTER VOTE*			
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted	5 -	15 · 22 · ·	17 22 -
DISMISSED AFTER VOTE			
PRE-HEARING VOTE POST-HEARING VOTE BALLOTS NOT COUNTED TOTAL	2 2 - 10	6 23 2 68	7 39 <u>-</u> 85

<sup>\*</sup>INCLUDES APPLICANT—INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

# BY THE ONTARIO LABOUR RELATIONS BOARD

		Number of Votes		
		November 1965	1st 8 Months 1965-66	FISCAL YEAR 1964-65
*RESPONDENT RESPONDENT	Successful Unsuccessful	1	1 16	9
	TOTAL	1	17	9

<sup>\*!</sup>N TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

# DARGET AMERICA BURADA ALD PUB COURTS

THE FOLLOWING PAPER WAS PRESENTED BY J.F.W. WEATHERILL, DEPUTY VICE-CHAIR-MAN, ONTARIO LABOUR RELATIONS BOARD, AT THE TWENTY-FOURTH ANNUAL CONFERENCE OF THE CANADIAN ASSOCIATION OF ADMINISTRATORS OF LABOUR LEGISLATION, HELD IN REGINA, AUGUST 19,1965.

THE STATUTE WITH WHICH I DEAL EVERY DAY PROVIDES, BY SECTION 80, THAT "No DECISION, ORDER, DIRECTION, DECLARATION OR RULING OF THE BOARD SHALL BE QUESTIONED OR REVIEWED IN ANY COURT, AND NO ORDER SHALL BE MADE OR PROCESS ENTERED, OR PROCEEDINGS TAKEN IN ANY COURT, WHETHER BY WAY OF INJECTION, DECLARATORY JUDGMENT, CERTIORARI, MANDAMUS, PROHIBITION, QUO WARRANTO, OR OTHERWISE, TO QUESTION, REVIEW, PROHIBIT OR RESTRAIN THE BOARD OR ANY OF ITS PROCEEDINGS" 1 THE CANADA LABOUR RELATIONS BOARD, AND MOST OF OUR PROVINCIAL ARE PROTECTED IN THEIR DETERMINATIONS OF THE MATTERS COMING BEFORE THEM, BY SIMILAR PROVISIONS, NOT ALWAYS AS SWEEPING OR AS BLUNT AS THE ONE I HAVE QUOTED. OUR JURISDICTION, THUS PROTECTED FROM REVIEW BY THE COURTS, IS AN EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED BY THE LABOUR RELATIONS ACT, AND TO DETERMINE ALL QUESTIONS OF FACT OF LAW THAT ARISE IN ANY MATTERS BEFORE THE BOARD, AND THE BOARD'S ACTION OR DECISION THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES. 3 THESE WIDE POWERS ARE NOT SUCH AS TO CONSTITUTE US JUDGES WITHIN THE MEANING OF SECTION 96 OF THE BRITISH NORTH AMERICA ACT, 4 AND OUR JURISDICTION AND POWERS SEEM TO HAVE BEEN GRANTED BY THE PROVINCIAL LEGISLATURE WITHIN THE SCOPE OF ITS LEGISLATIVE COMPETENCE. 5

THIRTEEN YEARS AGO, PROFESSOR LASKIN WROTE IN THE CANADIAN BAR REVIEW THAT "NO FORM OF WORDS DESIGNED TO OUST JUDICIAL REVIEW WILL SUCCEED IN DOING SO AGAINST THE CONTRARY WISHES OF A SUPERIOR COURT JUDGE", 6 AND PROFESSOR WILLIS HAS MORE RECENTLY CRITICIZED THE COURTS FOR HAVING "EMASCULATED" PRIVATIVE CLAUSES "BY WHAT AMOUNTS TO A SHAMELESS MISINTERPRETAT OF THEIR WORDING". 7 CERTAINLY IT IS TRUE THAT THE COMBINED EFFECT OF SECTIONS 79 AND 80 OF THE UNTARIO ACT, TO WHICH I REFERRED A MOMENT AGO, IS IN REALITY LITTLE LIKE WHAT THE UNSOPHISTICATED READER OF STATUTES - OR THE AVERAGE CITIZ - MIGHT IMAGINE. BUT HISTORY SPEAKS EFFECTIVELY, AND SHOULD BE HEEDED. THE IDEA OF LITERAL INTERPRETATION OF THE IPSISSIMA VERBA OF THE OF THE SOVEREIGN LEGISLATURE IS A LITTLE NAIVE, AS IS THE UNDERSTANDING OF THE ROLE OF THE COUR IN A PARLIAMENTARY DEMOCRACY WHICH IT IMPLIES. AT ANY RATE, IN MY OPINION IT NEITHER SURPRISING NOR SHOCKING THAT THE COURTS HAVE, WITH EASE, OVERCOME THE APPARENT BARRIER OF THE PRIVATIVE CLAUSE. SUPERIOR COURTS IN THE COMMON LAW WORLD HAVE ALWAYS ASSUMED A JURISDICTION TO REVIEW, WITHIN LIMITS, THE WORK OF INFERIOR TRIBUNALS. THIS IS NOT TO EXPRESS ANY SATISFACTION WITH THE WORK OF CANADIAN COURTS IN THE RECENT CASES WHICH I HAVE BEEN EXAMING. IT IS THE COUR OR THE JUDGE, RATHER THAN THE APPLICABLE RULES, WHICH IS CRUCIAL IN DETER-MINING THE OUTCOME OF THESE CASES. INDEED, EXCEPT FOR THE RULES OF NATURAL JUSTICE, WHICH HAVE SOME USEFUL SUBSTANCE AND PROVIDE SOME REAL GUIDANCE, THER ARE NO RULES AS TO JUDICIAL INTERFERENCE WHICH HAVE SUFFICIENT PARTICULARITY -OR SUFFICIENT JUDICIAL SUPPORT - TO BE OF MUCH SIGNIFICANCE OR HELP. ONE FIND FOR THE MOST PART, EITHER CASES WHERE THE COURT CITES NO AUTHORITY FOR INTERFERENCE WITH A TRIBUNAL'S DETERMINATION, OR CASES IN WHICH THE GROUNDS FOR CERTIORARI ARE RECITED AS A PIOUS INCANTATION BEFORE PROCEEDING WITH THE SACRIFICE.

WHILE IT IS OBVIOUS THAT THE COURTS DO NOT HEED THE APPARENTLY PLAIN PROVISIONS OF PRIVATIVE CLAUSES EXCLUDING THEM FROM ANY CONSIDERATION OF A LABOUR RELATIONS BOARD MATTER, IT DOES NOT FOLLOW THAT THE PRIVATIVE CLAUSE IS USELESS VERBIAGE. AND WHILE IT IS DESIRABLE THAT ADMINISTRATIVE TRIBUNALS SHOULD NOT BE INTERFERED WITH BY THE COURTS SO AS TO DEFEAT THE PURPOSES FOR WHICH THEY WERE ESTABLISHED, IT IS ALSO DESIRABLE THAT THESE TRIBUNALS BE SUBJECT TO SOME FORM OF CONTROL, IN THE INTERESTS OF AN ORDERLY LEGAL SYSTEM, AS WELL AS JUSTICE IN INDIVIDUAL CASES. THE DECLARED BASIS OF JUDICIAL INTERVENTION SEEMS TO ME TO BE INCONTROVERTIBLE, NAMELY, THAT AN ADMINISTRATIVE TRIBUNAL OR AGENCY CANNOT, BY AN ERRONEOUS INTERPRETATION OF ITS STATUTE, CONFER UPON ITSELF A JURISDICTION WHICH IT OTHERWISE WOULD NOT HAVE. USE WHAT IS MEANT BY "JURISDICTION" IS THE REAL ISSUE, AND IT IS ONE INVOLVING THE ATTITUDES OF JUDGES TOWARD THEIR OWN ROLES AND THEIR PREJUDICES REGARDING ADMINISTRATIVE TRIBUNALS.

THE QUESTION IS, WHO DECIDES WHAT? JURISDICTION, IN THE PRESENT CONTEXT, MEANS AUTHORITY TO DECIDE, WHETHER CORRECTLY OR INCORRECTLY. WHERE COURTS QUASH THE DECISIONS OF BOARDS ON GROUNDS OF INCORRECT DECISION, IT MEANS THE BOARD IS REQUIRED TO DECIDE A CERTAIN POINT CORRECTLY AND IN NO OTHER WAY. A DUTY IS IMPOSED TO MAKE THE PARTICULAR DECISION THE COURT WANTS. Thus, for example, the Police Mechanics case. 9 Here the court Quashed a DECISION OF THE UNTARIO LABOUR RELATIONS BOARD THAT MECHANICS WERE EXCLUDED FROM THE PROVISIONS OF THE LABOUR RELATIONS ACT, UNDER SECTION 2 (G) OF THE ACT. THIS DETERMINATION REQUIRED AN INTERPRETATION OF THE POLICE ACT. 10 IN THE RESULT, THE BOARD WAS REQUIRED BY THE COURT TO CONSIDER CERTAIN PARTICULAR PERSONS AS WITHIN THE SCOPE OF THE LABOUR RELATIONS ACT. THE BOARD, THAT IS TO SAY, HAD NO JURISDICTION TO DECIDE THE QUESTION OF THE SCOPE OF THE ACT. THIS USE OF THE TERM "JURISDICTION" MAY BE A SOMEWHAT SPECIAL USE OF LANGUAGE. SUCH, IT SHOULD NOT SURPRISE LAWYERS, BUT NEVERTHELESS IT SEEMS TO BE AT THE ROOT OF MANY PROBLEMS WHICH HAVE ARISEN. TO SAY THE BOARD HAD NO "JURISDICTION" TO DECIDE THE ISSUE IS NOT AT ALL THE SAME THING AS TO SAY IT HAD NO BUSINESS IN DECIDING IT. YET THIS IS WHAT, FOR A TIME, IT SEEMED THE ONTARIO COURT OF APPEAL WAS MAINTAINING. THE JUDGMENT OF THE LATE MR. JUSTICE LAIDLAW, GIVING THE OPINION OF THE COURT IN THE ONTARIO FOOD TERMINAL BOARD CASE, 11 INCLUDED THE FOLLOWING STATEMENT (REFERRING TO THE QUESTION WHETHER THE UNTARIO FOOD TERMINAL BOARD WAS A CROWN AGENCY, AND HENCE WITHIN THE PURVIEW OF THE LABOUR RELATIONS ACT): "I MAY SAY AT ONCE THAT IN MY OPINION THE ONTARIO LABOUR RELATIONS BOARD HAD NO RIGHT OR POWER TO DETERMINE THAT QUESTION. IT IS A PURE QUESTION OF LAW WHICH CAN BE DETERMINED ONLY BY A JUDGE OR JUDGES APPOINTED BY THE GOVERNOR GENERAL PURSUANT TO THE PROVISIONS OF THE BRITISH NORTH AMERICA ACT." WHILE ADMITTING THAT ANY TRIBUNAL HAD TO MAKE A PRELIMINARY DECISION WHETHER TO HEAR A CASE OR NOT, HE WENT ON TO GIVE HIS OPINION THAT "WHEN THE QUESTION OF JURISDICTION OR ANY OTHER QUESTION OF PURE LAW IS RAISED IN A PROCEEDING BEFORE A TRIBUNAL SO CONSTITUTED, THE PROCEEDING SHOULD BE STAYED UNTIL SUCH QUESTION HAS BEEN FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, "12 AS PROFESSOR LASKIN POINTED OUT IN A CRITICAL NOTE, 13 IT IS ONE THING TO SAY THAT DETERMINATIONS OF THIS SORT, WHETHER

DESCRIBED AS COLLATERAL OR NOT ARE SUBJECT TO JUDICAL REVIEW. IT IS QUITE ANOTHER THING TO SAY THAT THE LABOUR RELATIONS BOARD IS CONSTITUTIONALLY INCAPABLE OF MAKING THEM AS PART OF THE ROUTINE OF ITS FUNCTION. THIS EXTREME VIEW HAS, I AM HAPPY TO SAY, WON NO ACCEPTANCE, AND INDEED IT CONFLICTS WITH PREVIOUS JUDGMENTS OF THE SUPREME COURT OF CANADA AND OF THE PRIVY COUNCIL. IN THE TAYLOR CASE, 14 WHICH CAME BEFORE THE COURTS A FEW MONTHS AFTER THE FOOD TERMINAL CASE, CHIEF JUSTICE MCRUER, REVIEWING THE AUTHORITIES CONCLUDED THAT "THE SECTIONS OF THE LABOUR RELATIONS ACT IN QUESTION ARE CONSTITUTIONAL AND | DO NOT THINK IT WAS BEYOND THE POWERS OF THE LEGISLATURE TO CLOTHE THE LABOUR RELATIONS BOARD WITH JURISDICTION TO MAKE DECISIONS OF LAW INCIDENTAL TO ITS ADMINISTRATIVE DUTIES. OBVIOUSLY THE BOARD MUST DECIDE MANY INCIDENTAL QUESTIONS OF LAW IN THE PERFORMANCE OF ITS ADMINISTRATIVE FUNCTIONS BUT IN SAYING THIS | DO NOT WISH IT TO BE TAKEN THAT I THINK THAT THE BOARD HAS POWER TO MAKE DECISION IN LAW WITH RESPECT TO COLLATERAL MATTERS WHICH MAY NOT BE REVIEWED ON CERTIORARI. IN OTHER WORDS, IT CANNOT GIVE ITSELF JURISDICTION BY WRONG DECISIONS IN LAW." I AM PLEASED TO SAY, TOO, THAT THE RATHER SLIGHTING VIEW OF LAIDLAW J.A. CONCERNING THE "LEGAL COMPETENCE" OF BOARDS (HE DENIED WE HAD ANY, AND CHARACTERIZED OUR INTERVENTION IN SUCH QUESTIONS AS "UNAUTHORIZED AND UNLAWFUL"), MAY NOW BE SET BESIDE THE MORE FLATTERING VIEW OF MR. JUSTICE ABBOTT (GIVING, ALAS, A MINORITY VIEW). IN THE ASSOCIATED MEDICAL SERVICES CASE 15 HE STATED THAT "A BOARD SUCH AS THE LABOUR RELATIONS BOARD, EXPERIENCED IN THE FIELD OF LABOUR MANAGEMENT RELATIONS REPRESENTING BOTH ORGANIZED EMPLOYERS, ORGANIZED LABOUR, AND THE PUBLIC, AND PRESIDED OVER BY A LEGALLY TRAINED CHAIRMAN, OUGHT TO BE AT LEAST AS COMPETENT AND AS WELL SUITED TO DETERMINE QUESTIONS ARISING IN THE COURSE OF THE ADMINISTRATION OF THE ACT AS A SUPERIOR COURT JUDGE".

So, I BELIEVE, IT WAS INTENDED. FOR SPECIALIZED MATTERS OF FREQUENT OCCURRENCE, INVOLVING CONTINUALLY THE INTERESTS OF CERTAIN DEFINED INTEREST GROUPS, AND CALLING FOR SOME DEGREE OF EXPERTISE, A SPECIALIZED TRIBUNAL IS NECESSARY. THE ESTABLISHMENT OF BOARDS OR COMMISSIONS HAVING BROAD POWERS BOTH OF INVESTIGATION AND OF ACTION IS NOTHING NEW - AND NEITHER IS JUDICIAL REVIEW OF THEIR ENDEAVOURS. WHETHER THE RESULT OF JUDICIAL REVIEW IS SEEN AS THE FRUSTRATION OF A WORTHWHILE LEGISLATIVE ENTERPRISE, OR THE PRESERVATION OF INDIVIDUAL LIBERTY AGAINST TYRANNICAL EXCESS DEPENDS, NOT JUST ON ONE'S POINT OF VIEW, BUT ON THE NATURE OF THE CASE. WHERE LEGISLATION EMBODYING A BASIC SOCIAL CONCENSUS - SUCH AS OUR LABOUR RELATIONS LEGISLATION - IS CONCERNED, THE DUTY OF THE COURTS IS TO LEND ASSISTANCE TO THE EFFECTING OF ITS PURPOSE. THIS REQUIRES, I SUGGEST, A FAIR APPRECIATION OF THE TASKS TO BE PERFORMED BY LABOUR RELATIONS BOARDS AND CONFIRMATION OF THE CONFIDENCE WHICH LEGISLATURES HAVE PLACED IN THEM. THE HISTORY OF JUDICIAL REVIEW. HOWEVER, IS LARGELY A HISTORY OF INTERFERENCE - SOMETIMES VERY LAUDABLE AND FOR THE BEST OF MOTIVES, SOMETIMES SIMPLY AS RESULT OF REACTIONARY ATTITUDES. THE WRIT OF CERTIORARI MAY BE FOLLOWED THROUGH SIX CENTURIES - A FACT WHICH SHOULD PROVOKE OUR MINDS TO WONDERING WHY WE HAVEN'T DEVELOPED A SOMEWHAT MORE SOPHISTICATED SET OF RULES FOR ITS ISSUE.

I HOPE IT IS TRUE, AS ABBOTT J. SUGGESTED, THAT MEMBERS OF BOARDS ARE AT LEAST AS COMPETENT AS JUDGES TO DECIDE QUESTIONS ARISING IN THE COURSE OF THE ADMINISTRATION OF THE LABOUR RELATIONS ACTS. BUT DIFFICULTY ARISES BECAUSE THE QUESTION OF JURISDICTION ITSELF IS NOT A QUESTION "ARISING IN THE

COURSE OF THE ADMINISTRATION OF THE ACT " - OR RATHER, IT APPEARS TO MOST OF OUR JUDGES NOT TO BE SUCH A QUESTION. HERE AGAIN, THE MEANING OF THE TERM IS IN ISSUE, AND THE HARD QUESTION OF PRACTICAL POLITICS IS, WHO OUGHT TO DECIDE WHAT? IN ANY CASE, ISN'T IT TRUE THAT EVERY DETERMINATION NECESSARY FOR THE IMPLEMENTATION OF A STATUTE INVOLVES THE MAKING OF OTHER DETERMINA-TIONS (USUALLY OF A SIMPLE, UNOBJECTIONABLE KIND), WHICH TAKE THE DECIDER OUTSIDE THE STRICT CONFINES OF THE ACT? IN COMMENTING 16 ON THE ONTARIO FOOD TERMINALS CASE, IN WHICH THE COURT CONSIDERED THE CORRECTNESS OF THE BOARD'S DETERMINATION THAT THE FOOD TERMINALS BOARD WAS NOT A CROWN AGENCY, PROFESSOR LASKIN POINTED OUT THAT THE BOARD S FUNCTION IN SUCH A CASE WAS LIKE THE FUNCTION IT MIGHT BE CALLED UPON TO PERFORM WITH RELATION TO SECTION 2 OF THE LABOUR RELATIONS ACT, BY WHICH MEMBERS OF A POLICE FORCE WITHIN THE MEANING OF THE POLICE ACT, FULL-TIME FIREFIGHTERS WITHIN THE MEANING OF THE FIRE DEPARTMENTS ACT, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT ARE EXCLUDED FROM THE PURVIEW OF THE LABOUR RELATIONS LEGIS-LATION. "THE ONTARIO COURT OF APPEAL", HE WROTE, "WOULD HAVE IT THAT THE LABOUR RELATIONS BOARD CAN NO MORE DECIDE ANY OF THESE QUESTIONS THAN IT CAN DECIDE WHETHER A STATUTORY AGENCY ENJOYS CROWN IMMUNITY." OF COURSE, BOARDS CAN, MUST, AND DO DECIDE SUCH QUESTIONS - BUT IT WAS JUST SUCH A QUESTION - NAMELY WHETHER CERTAIN PERSONS WERE EXCLUDED AS MEMBERS OF A POLICE FORCE - ON WHICH THE COURTS INTERVENED TO QUASH A DECISION OF THE ONTARIO BOARD. AND IN THE ASSOCIATED MEDICAL SERVICES CASE, 1 7 OF THE 9 JUDGES WHO SAT IN THE SUPREME COURT OF CANADA (AND ALL OF THE ONTARIO COURT OF APPEAL) HELD THAT IT WAS PROPER FOR THE COURT TO CONSIDER THE MERITS OF THE BOARD'S DECISION THAT A CERTAIN COMPLAINANT WAS A "PERSON" FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. THE BASIS OF INTERFERENCE, OF COURSE. IS THAT THE QUESTION IS "COLLATERAL", "EXTRINSIC" OR "PRELIMIN-ARY", THAT IT GOES TO THE QUESTION OF JURISDICTION. THESE ASSERTATIONS NEED TO BE ANALYSED, AND NOT MERELY BY THE PUZZLED VICTIM, BUT BY THE COURTS THEMSELVES. SUCH ANALYSIS IS, IN THE MAJORITY OF CASES, NOT TO BE FOUND. TO SAY THAT A QUESTION IS "COLLATERAL" OR "PRELIMINARY" IS NOT TO APPLY A TEST, OR STATE A CRITERION, BUT RATHER, TO ANNOUNCE A RESULT. DON'T DENY OF COURSE, THAT ANY TEST OR CRITERION OF JURISDICTION WOULD HAVE TO BE OF AS GENERAL NATURE AS, SAY, THE TEST OF REASONABLE CONDUCT IN THE LAW OF TORTS, BUT SUCH A TEST AT LEAST HAS THE VIRTUE OF REMINDING THE DECIDER AS WELL AS HIS CRITICS THAT THESE ARE NOT SIMPLY QUESTIONS OF BLACK OR WHITE. WHAT NEEDS TO BE CONSIDERED IS THE CONCEPT OF "JURISDICTION", AND THE PROS AND CONS OF A RELATIVELY BROAD, AS OPPOSED TO A RELATIVELY NARROW CONCEPT. THE WORD JUST DOES NOT HAVE THE SIMPLE MEANING WHICH THE LANGUAGE OF THE CASES WOULD SUGGEST. THE POSSIBILITIES MAY BE ARRANGED IN A SORT OF SPECTRUM; AT ONE END, PUT THE QUESTION WHETHER CERTAIN OPERATIONS OF AN EMPLOYER ARE SUBJECT TO THE LEGISLATION, WITH RESPECT TO LABOUR RELATIONS, OF THE PROVINCE OR OF THE DOMINION. THIS IS A QUESTION OF CONSTITUTIONAL LAW, AND IT IS A QUESTION OVER WHICH THE COURTS HAVE JURISDICTION. THE BOARDS OF COURSE, DESPITE THE STRICTURES OF LAIDLAW J.A. MUST, WHEN FACED WITH SUCH AN ISSUE, DECIDE IT, BUT THEY HAVE NO JURISDICTION TO DECIDE IT OTHER THAN CORRECTLY.

NEXT TO CONSTITUTIONAL QUESTIONS, CONSIDER GENERAL QUESTIONS OF INTERPRETATION, SUCH AS THE MEANING OF "DAY OR "MONTH" WHICH PROBABLY COULD NOT BE SAID TO HAVE A SPECIAL MEANING UNDER THE LABOUR RELATIONS ACT.

ANOTHER SORT OF QUESTION WHICH THERE IS NOT MUCH DOUBT A COURT WOULD DETERMINE IS THE QUESTION GOING TO THE STATUS OF THE BOARD, AND INCLUDING, PERHAPS,

QUESTIONS OF THE PROPRIETY OF APPOINTMENTS OF BOARD MEMBERS (ALTHOUGH, BY SECTION 80, QUO WARRANTO IS EXCLUDED). THE WHOLE SET OF RULES OF NATURAL JUSTICE FALL INTO THIS CATEGORY, AS BOARDS ARE SAID TO "LOSE JURISDICTION" BY THEIR BREACH.

SOMEWHERE ABOUT THE MIDDLE OF THE SPECTRUM | WOULD PLACE QUESTIONS SUCH AS THOSE MENTIONED EARLIER: IS A PERSON A MEMBER OF A POLICE FORCE? 19 IS HE, INDEED, A "PERSON"? 20 THESE QUESTIONS UNDOUBTEDLY INVOLVE REFERENCE TO MATTERS AND STATUTES EXTRINSIC TO THE LABOUR RELATIONS ACT ITSELF; AND YET AT THE SAME TIME THEY INVOLVE CONSIDERATION OF CIRCUM-STANCES OF THE SORT WITH WHICH THE STATUTE IS PRIMARILY CONCERNED. HOW DIFFERENT, THEN, IS THE QUESTION WHETHER A CERTAIN PERSON IS AN EMPLOYEE OF A PARTICULAR EMPLOYER? THIS QUESTION SURELY INVOLVES MANY CONSIDERATIONS EXTRINSIC TO THE STATUTE, BUT AT THE SAME TIME IT GOES TO THE HEART OF THE MATTER WITH WHICH LABOUR RELATIONS BOARDS ARE CONCERNED. THE SUPREME COURT OF CANADA, IN THE TRADER'S SERVICE CASE, 21 HELD THAT THIS QUESTION WAS ENTIRELY WITHIN THE JURISDICTION OF THE LABOUR RELATIONS BOARD OF BRITISH COLUMBIA. 22 OF A SIMILAR SHADE, I THINK, IS THE QUESTION WHETHER AN ORGAN-IZATION IS A TRADE UNION, A QUESTION, AGAIN, OVER WHICH THE BOARDS! JURIS-DICTION HAS BEEN CONFIRMED BY THE SUPREME COURT OF CANADA 23 AT THE OTHER END OF THE SPECTRUM ARE QUESTIONS OVER WHICH THE BOARDS! JURISDICTION IS CLEAR, QUESTIONS CONCERNING UNFAIR LABOUR PRACTICES, 24 | SUGGEST, OR. CLEAREST OF ALL, PERHAPS, THE QUESTION WHETHER A PERSON, BEING AN EMPLOYEE, IS A MEMBER OF THE TRADE UNION INVOLVED. 25 EXPRESS REFERENCE TO THE BOARD OF QUESTIONS OF EMPLOYMENT STATUS, SUCH AS WHETHER A PERSON EXERCISES MANAGER-IAL FUNCTIONS, AND OF THE APPROPRIATENESS OF BARGAINING UNITS MAKES IT ABUNDANTLY CLEAR THAT SUCH QUESTIONS ARE FOR BOARDS ALONE TO DECIDE, WHETHER A COURT AGREES WITH THE DECISION OR NOT. | AM AWARE THAT CASES INVOLVING BARGAINING UNITS HAVE BEEN BEFORE THE COURTS SEVERAL TIMES, BUT | THINK THESE WILL BE FOUND TO TURN ON QUESTIONS OF NATURAL JUSTICE, OR PARTICULAR LIMITING PROVISIONS OF THE STATUTES CONCERNED, RATHER THAN ON THE MERITS OF THE DETERMINATION ITSELF.

THE SORTS OF QUESTIONS WHICH MAY ARISE IN THE COURSE OF A BOARD'S ADMINISTRATION OF THE MATTERS COMING BEFORE IT MAY THUS BE ARRANGED ON A SPECTRUM FROM CLEARLY REVIEWABLE TO CLEARLY NOT REVIEWABLE. THE DIFFICULTY IF THAT THE JUDICIAL CRITERION IS OF AN EITHER-OR VARIETY: DOES A QUESTION GO "TO THE VERY ESSENCE OF THE ENQUIRY". (THAT IS, IS IT BEYOND REVIEW), OR IS IT "EXTRINSIC", "COLLATERAL", "PRELIMINARY" OR "NOT THE MAIN QUESTION THE TRIBUNAL HAS TO DECIDE", (THAT IS, SUBJECT TO REVIEW)? THESE PHRASES, I HAVE SUGGESTED, ARE REALLY DESCRIPTIVE OF RESULT. ANY QUESTION WHICH A TRIBUNAL HAS TO DECIDE BEFORE IT CAN MAKE ITS DECISION IS, IN A SENSE, NECESSARY, AND CAN HARDLY BE CALLED "EXTRINSIC". IN OTHER JURISDICTIONS IN THE COMMON-LAW WORLD, COURTS HAVE BEEN ABLE TO STATE SOMEWHAT MORE SIGNIFICANT CRITERIA. DIXON J. SET OUT THE VIEW OF THE HIGH COURT OF AUSTRALIA IN THE KING V. HICKMAN, 26 WHERE THE PRIVATIVE CLAUSE WAS NOT UNLIKE THAT IN THE ONTARIO LABOUR RELATIONS ACT, AS FOLLOWS:

"- - THEY ARE NOT INTERPRETED AS MEANING TO SET AT LARGE THE COURTS OR OTHER JUDICIAL BODIES TO WHOSE DECISION THEY RELATE. SUCH A CLAUSE IS INTERPRETED AS MEANING THAT NO DECISION WHICH IS IN FACT GIVEN BY THE BODY CONCERNED SHALL BE INVALIDATED ON THE GROUND THAT IT HAS NOT CONFORMED TO THE REQUIREMENTS GOVERNING ITS PROCEEDINGS OR THE EXERCISE OF ITS AUTHORITY OR HAS NOT CONFINED ITS ACTS WITHIN THE LIMITS LAID DOWN BY THE INSTRUMENT GIVING IT AUTHORITY, PROVIDED ALWAYS THAT ITS DECISION IS A BONA FIDE ATTEMPT TO EXERCISE ITS POWER, THAT IT RELATES TO THE SUBJECT MATTER OF THE LEGISLATION, AND THAT IT IS REASONABLY CAPABLE OF REFERENCE TO THE POWER GIVEN TO THE BODY."

On this test, many of the Canadian <a href="Certiorari">CERTIORARI</a> cases would have been decided differently. The determination of the issue whether a board's decision "Reasonably refers" to the power granted it remains, of course, within the Jurisdiction of the courts. Mr. Justice Spence, in his opinion given in the <a href="Associated Medical Services">Associated Medical Services</a> case, 27 urges, in effect, that the criterion suggested by Dixon J. begs the question, since, where an inferior tribunal interprets the power granted to it in broader terms than the court thought proper, then the court would simply conclude that the exercise of the board's power was not "reasonably capable of reference" to the power given it. With respect, this view is unfair to judges. Similar reasoning would reduce any test of "reasonableness" to one of "judge's preference", and while the results sometimes suggest such a thing, it would be wrong to suggest it was the general rule.

CANADIAN CASES, NEVERTHELESS, CONTINUE ON THE BASIS OF A DISTINCTION BETWEEN COLLATERAL MATTERS, REVIEWABLE BY COURTS, AND QUESTIONS GOING TO THE MAIN ISSUE THE BOARD MUST DECIDE, AS TO WHICH ITS JURISDICTION IS EXCLUSIVE. IN ONE OF THE RARE JUDGMENTS EXAMING THE CRITERIA BY WHICH THE DISTINCTION MIGHT BE DRAWN IN ANY CASE, MR. JUSTICE FREEDMAN, GIVING JUDGMENT OF THE MANITOBA COURT OF APPEAL IN THE PARKHILL BEDDING CASE, EXAMINED THE LEADING CASES IN WHICH IT HAD BEEN HELD THAT THE ISSUE BEFORE THE BOARD WAS A COLLATERAL OR PRELIMINARY QUESTION. THE COMMON FACTOR IN THESE CASES, FREEDMAN J. POINTED OUT, WAS THAT THE POINT FOR DETERMINATION INVOLVED AN EXAMINATION OF LEGAL PRINCIPLES AND CONSIDERATIONS THAT WENT BEYOND THE SIMPLE CONFINES OF THE STATUTE UNDER WHICH THE BOARD OPERATED. HOWEVER, AS I HAVE ARGUED EARLIER, EVERY CASE INVOLVES RELIANCE ON PRINCIPLES BEYOND THE SIMPLE CONFINES OF THE STATUTE: IT IS A QUESTION OF DEGREE.

While the distinction between "collateral" and "main" questions continues to be drawn, and as a rule, drawn without any real analysis, I cannot leave discussion of the problem of jurisdiction without reference to the remarks of Lord Esher, made in the <a href="Income lax Commissioners">Income lax Commissioners</a> case, 29 and referred to with approval by the Ontario Court of Appeal in the <a href="Bradley">Bradley</a> case, 30 Lord Esher suggested that in some cases the Legislature might "entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more". Judicial intervention, in such a case, would be a stage removed.

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WHERE A TRIBUNAL WHICH IS REQUIRED TO ACT JUDICIALLY FAILS TO DO SO, IT DEPRIVES ITSELF OF THE JURISDICTION IT WOULD OTHER WISE HAVE. ITS DECISION IN SUCH CIRCUMSTANCES, IS NO LONGER "REALLY" A DECISION. THE RULES OF NATURAL JUSTICE ARE THUS A SPECIAL CHAPTER IN THE QUESTION OF JURISDICTION. THESE ARE WELL-DOCUMENTED AND, SPEAKING GENERALLY, THERE IS NOTHING REMARK—ABLE IN THE RECENT CANADIAN CASES ON THIS SCORE. QUESTIONS OF BIAS OF COURSE ARE VERY LIKELY TO ARISE IN TRIBUNALS CONSTITUTED IN TRIPARTITE FORM, BECAUSE OF THE INTERESTS WITH WHICH THE REPRESENTATIVE MEMBERS ARE ASSOCIATED. INTERESTING LEGAL DEVELOPMENTS ON THIS QUESTION ARE MORE LIKELY TO ARISE WITH RESPECT TO THE OPERATIONS OF ARBITRATION BOARDS, WHERE THE STATUTORY SANCTION IS LESS CLEAR, AND THE LIKELIHOOD OF IMARTIALITY FOR LESS.

QUESTION OF LACK OF NOTICE ARISE WITH DISTURBING FREQUENCY. | MUST ADMIT IT IS A SURPRISE, ON READING SOME OF THE REPORTED DECISIONS, TO DISCOVER THAT EVIDENCE, OR SOME COMMUNICATION CONTAINING EVIDENTIARY ASSERTION WOULD BE RECEIVED BY A BOARD WITHOUT THE OTHER PARTY BEING SO INFORMED. THESE LAPSES ARE MOST LIKELY TO ACCUR, I THINK, AFTER THERE HAS BEEN A HEARING AND WHERE FURTHER INFORMATION IS NEEDED. SURELY IT IS THE RULE THAT WHEREVER THAT INFORMATION MAY ADVERSELY AFFECT A PARTY OTHER THAN THE INFORMANT, THEN THAT OTHER PARTY MUST BE APPRISED OF THE INFORMATION. THE SAME IS TRUE OF ARGUMENT. IT IS NOT ALWAYS NECESSARY THAT OPPORTUNITY FOR REPLY BE GIVEN, SOME COMFORT MAY BE TAKEN FROM THE DECISION OF THE SUPREME COURT OF CANADA IN THE FOREST IN WHICH JUDSON J., GIVING THE JUDGMENT OF THE INDUSTRIAL RELATIONS CASE, 31 COURT, STATED, "AFTER HEARING FROM ONE SIDE, AND HEARING FROM THE OTHER SIDE IN REPLY, IT IS NOT A DEPARTURE FROM THE RULES OF NATURAL JUSTICE FOR THE BOARD TO HOLD THAT THE DEBATE HAD GONE ON LONG ENOUGH AND THAT IT WAS TIME TO STOP". 32 | SHOULD ADD THAT IN THE MORE RECENT LOOMIS ARMED CAR SERVICE CASE, 33 FOREST INDUSTRIAL RELATIONS IS DISTINGUISHED ON THE BASIS THAT IN THAT CASE, THE PARTIES HAD AMPLE OPPORTUNITY OF KNOWING EACH OTHERS SUBMISSIONS AND WERE ALLOWED TO CROSS-EXAMINE ON THOSE SUBMISSIONS. HERE, THE COURT SAID IN THE LATTER CASE, THERE WAS NOTHING EVEN RESEMBLING A DEBATE. ONE PARTY WAS ALLOWED TO SEE THE SUBMISSIONS OF THE OTHER PARTY AND TO REPLY TO THEM. BUT THAT REPLY WAS NOT SHOWN TO THE OTHER PARTY AND THEY KNEW NOTHING OF IT UNTIL CERTIFICATION WAS GRANTED. EVEN IN THE AREA OF NATURAL JUSTICE, HOWEVER, THERE ARE ONE OR TWO OMINOUS SIGNS. IN THE JIM PATRICK CASE, 34 THE SASKATCHEWAN COURT OF APPEAL QUASHED A CERTIFICATION ON THE GROUND THERE WAS A DENIAL OF NATURAL JUSTICE IN THE REFUSAL TO GRANT AN ADJOURNMENT. IN THAT CASE THE RESPONSIBLE OFFICER OF THE COMPANY WAS AWAY ON A MOTOR TRIP TO MEXICO WHEN AN APPLICATION FOR CERTIFICATION WAS MADE. PROBABLY THE COURT WAS MOVED BY THE CIRCUMSTANCE THAT THE BOARD SEEMS TO HAVE SAID TO THE COMPANY'S SOLICITOR THAT AN ADJOURNMENT WOULD BE GRANTED, BUT WHEN THE CASE CAME ON, HEARD IT. ONE WOULD HOPE, IN ANY EVENT, THAT THIS DECISION DOES NOT MEAN THAT A COURT WILL ALWAYS INTERVENE WHEN, IN ITS VIEW, AN ADJOURNMENT SHOULD HAVE BEEN GIVEN, OR, IN PARTICULAR, THAT A CASE MUST AWAIT THE AVAILABILITY OF A PARTY.

A SOMEWHAT DISTURBING VARIATION ON THE NOTIONS UNDERLYING THE REQUIREMENTS OF NOTICE APPEARS IN QUESTIONS DEALING WITH THE RECEPTION OF EVIDENCE. A CHARACTERISTIC OF THE MATTERS COMING BEFORE LABOUR RELATIONS BOARDS

IS THAT CERTAIN FACTS OR TYPES OF FACTS ARE RECURRENT. IN PARTICULAR, THE QUESTION WHETHER AN ORGANIZATION IS A TRADE UNION IN A QUESTION THAT ARISES, WITH RESPECT TO THE SAME ORGANIZATIONS OR COGNATE ORGANIZATIONS, TIME AFTER TIME. ALTHOUGH THE COURTS HAVE RECOGNIZED THE BOARDS! EXCLUSIVE JURISDICTION IN THIS REGARD, THEIR PROCEDURE IN EXERCISING THAT JURISDICTION IS STILL OPEN TO SUPERVISION. DOES THIS REQUIRE A FULL-DRESS INVESTIGATION TO SUPPORT THE FINDING IN EACH CASE? IT IS NOT LIKELY, AND THE COMMON STATUTORY PROVISIONS GIVING BOARDS THE RIGHT TO ESTABLISH THEIR OWN PROCEDURE, SUBJECT TO THE RIGHT OF THE PARTIES TO BE HEARD, PROBABLY SUPPORT THIS OBVIOUS REQUIREMENT OF COMMON SENSE. SOME BASIS FOR THE FINDING MUST BE ESTABLISHED IN ANY CASE.

IN THE TRENTON CONSTRUCTION WORKERS ASSOCIATION CASE, 35 WHERE AN ORGANIZATION'S STATUS AS A TRADE UNION WAS IN ISSUE, THE COURT HELD THAT THE ONTARIO LABOUR RELATIONS BOARD ERRED IN RESORTING TO EVIDENCE THAT HAD BEEN GIVEN BEFORE A BOARD DIFFERENTLY CONSTITUTED IN REGARD TO ANOTHER APPLICATION. IT WOULD SEEM TO ME THAT IF THIS IS ERROR, IT WOULD BE ERROR REGARDLESS OF THE CONSTITUTION OF THE PANEL HEARING THE CASE. THE BOARD RELIED UPON MATERIAL SET OUT IN THE ENDORSEMENT OF THE RECORD IN AN EARLIER CASE. IF THE DECISION MEANS THAT FINDINGS OF FACT IN PREVIOUS CASES MAY NEVER BE RELIED ON, THEN I SUBMIT WITH RESPECT THAT IT GOES TOO FAR. IT CAN BE SUPPORTED, I SUGGEST, AS FINDING THE BOARD TO BE IN ERROR IN RELYING ON THE EVIDENCE IN ANOTHER CASE AS ESTABLISHING ANYTHING MORE THAN THE FACTS THERE FOUND. WHETHER THERE ARE ANY REAL DANGERS HERE FOR THE EFFICIENT CONDUCT OF BOARDS! REGULAR BUSINESS REMAINS TO BE SEEN.

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THE QUESTION WHICH THE BOARD HAD DETERMINED IN THE TRENTON CONSTRUC-TION WORKERS CASE WAS WHETHER AN ORGANIZATION WAS A TRADE UNION. THE RIGHTNESS OR WRONGNESS OF THIS DECISION IN ITSELF WOULD NOT BE REVIEWABLE ON CERTIORARI. IT WAS ADMITTED BY COUNSEL FOR THE BOARD, HOWEVER, THAT IF IT APPEARED ON THE FACE OF THE ORDER OF THE BOARD THAT IT CONSIDERED EVIDENCE IT COULD NOT LEGALLY CONSIDER, OR IF THE BOARD MISINTERPRETED THE STATUTE UNDER WHICH IT MADE ITS ORDER, THEN THE BOARD'S ORDER OUGHT TO BE SET ASIDE. IT MAY BE THAT COUNSEL ADMITTED MORE THAN HE NEEDED TO: IT RAISES THE LAST GROUND OF REVIEW WHICH | WISH TO CONSIDER, AND THE MOST CONFUSING: "ERROR OF LAW ON THE FACT OF THE RECORD". THIS IS A DIFFICULT PHRASE TO UNDER STAND. IT IS ASSERTED AS A GROUND FOR REVIEW SIDE BY SIDE WITH THE ASSERTION THAT DETERMINATIONS MADE WITHIN A BOARD'S JUBISDICTION ARE NOT OPEN TO REVIEW EVEN WHERE THERE IS ERROR of fact or of Law. 36 "Error of Law on the fact of the record", then, is some special sort of mistake. In the Tag's Plumbing case 37 the finding of the SASKATCHEWAN LABOUR RELATIONS BOARD THAT AN APPLICANT IN AN UNFAIR LABOUR PRACTICE CASE WAS A TRADE UNION "DIRECTLY CONCERNED" WITH CERTAIN EVENTS WAS ATTACKED ON CERTIORARI. HAVING FOUND THAT SUCH A MATTER WAS WITHIN THE BOARD'S JURISDICTION, SO THAT THE ORDER COULD NOT BE ATTACKED ON THAT BASIS, CULLITON J.A. WENT ON TO DEAL WITH THE ARGUMENT THAT THERE WAS ERROR OF LAW ON THE FACE OF THE RECORD. HE SAID "THE ALLEGATION OF ERROR OF LAW ON THE FACE OF THE RECORD CAN ONLY BE SUBSTANTIATED IF THE BOARD IS BOUND NOT ONLY TO RECORD ITS FINDINGS, BUT ALSO THE EVIDENCE UPON WHICH THE FINDINGS WERE BASED." IT WAS CONCLUDED THAT THE BOARD WAS NOT SO BOUND. COUNSEL FOR THE APPLICANT HAD REFERRED THE COURT TO THE JUDGMENT OF MACDONALD J.A. SPEAKING FOR THE SASKAT-CHEWAN COURT OF APPEAL IN THE JOHN EAST CASE, 38 THAT "NOT ONLY IS IT THE DUTY OF THE BOARD TO FIND THE NECESSARY FACTS, BUT IT IS ALSO ITS DUTY TO RECORD

THEM." IN TAG'S PLUMBING CULLITON J.A. WENT ON TO SAY THAT HE DID NOT CONSTRUE THAT STATEMENT AS A REQUIREMENT THAT THE BOARD RECORD THE EVIDENCE UPON WHICH ITS FINDINGS ARE BASED. BUT ALL THIS SEEMS TO CARRY THE IMPLICATION THAT A COURT WILL REVIEW THE CORRECTNESS OF CONCLUSIONS DRAWN BY BOARDS FROM THE EVIDENCE IN CASES WHERE THE BOARDS SEE FIT TO DESCRIBE SUCH EVIDENCE IN THEIR DECISION. WHAT THEN AS TO THE RIGHT OF BOARDS TO BE "WRONG", PROVIDED THEY ACT WITHIN THEIR JURISDICTION? A JURISDICTION TO BE RIGHT ONLY IS NO JURISDICTION, AS THAT TERM IS USED IN THIS CONTEXT.

THE MYSTERY - OR MYSTIQUE - OF THIS GROUND OF REVIEW CAN I THINK BE EXPLAINED ON A HISTORICAL BASIS. THE MODERN CASE WHICH HAS MADE THE IDEA OF "ERROR OF LAW ON THE FACE OF THE RECORD" COMMON COIN IS THE NORTHUMBERLAND CASE, 39 WHICH HAS BEEN REFERRED TO IN MANY CANADIAN DECISIONS. IT WAS THERE HELD FOR THE FIRST TIME THAT CERTIORARI WOULD ISSUE TO QUASH THE DECISIONS OF A STATUTORY ADMINISTRATIVE TRIBUNAL FOR ERROR OF LAW ON THE FACE OF THE RECORD. THIS WAS INREALITY A NEW APPLICATION OF A LONG-ESTABLISHED PRINCIPLE. FROM THE 17th CENTURY THE KING'S BENCH HAD ISSUED CERTIORARI TO QUASH CONVICTIONS AND ORDERS OF INFERIOR COURTS (THE NORTHUMBERLAND CASE EXTENDS THIS TO TRIBUNALS). AND IN AID OF THIS PROCESS, THE COURTS HAD GONE TO SOME LENGTHS IN REQUIRING THE LOWER COURTS TO COMPLETE THEIR RECORDS - THAT IS, TO PROVIDE THE ROPE WITH WHICH THEY WOULD BE HUNG. CONVICTIONS WERE QUASHED FOR ERROR OF SUBSTANTIVE LAW, FOR WHAT SEEMED TO BE LACK OF EVIDENCE ON A MATERIAL POINT OR FOR TRIVIAL FORMAL DEFECTS. PARLIAMENT RETALIATED WITH THE PRIVATIVE CLAUSE, AND WITH SUMMARY PROCEDURE ACT, 1848, A STANDARD FORM OF CONVICTION THAT OMITTED ALL MENTION OF THE EVIDENCE OF THE REASONING BY WHICH THE CONVICTION HAD BEEN REACHED. THIS DID NOT ALTER THE LAW RELATING TO CERTIORARI, BUT IT MADE IT VIRTUALLY IMPOSSIBLE FOR THE COURTS TO CORRECT ERRORS OF LAW OTHER THAN THOSE GOING TO DURISDICTION, SINCE EVIDENCE IN A CERTIORARI APPLICATION MAY NOT BE ADMITTED TO PROVE LACK OF EVIDENCE OR CONCEALED ERROR OF LAW. THE "FACE OF THE RECORD! THEN BECAME, IN THE WORDS OF LORD SUMMER, "THE INSCRUTABLE FACE OF A SPHINX".40 FOR THIS REASON "ERROR OF LAW ON THE FACE OF THE RECORD" WAS LITTLE USED UNTIL IT WAS APPLIED TO ADMINISTRATIVE TRIBUNALS IN 1952. WHILE IT IS LIKELY THE CASE THAT BOARDS WOULD NOT ACTUALLY BE REQUIRED TO EXPAND THE RECORD SO AS TO INCLUDE THE SORT OF MATERIAL WHICH WOULD SUPPORT REVIEW, NEVER-THELESS IT IS SURELY UNDESIRABLE THAT THEY SHOULD BE LED, IN THE HOPE OF PROTECTING THEMSELVES, TO REDUCE THE RECORDS NOW PRODUCED - THAT IS, TO AVOID GIVING SUBSTANTIAL REASONS. IN SUMMARY CONVICTION CASES LENGTHY REASONS ARE OF LITTLE PRACTICAL USE, BUT IN MATTERS SUCH AS THOSE COMING BEFORE THE LABOUR RELATIONS BOARDS THERE IS A CONTINUING CLIENTELE, AND THE GIVING OF REASONS, IS, IT IS HOPED, OF SOME VALUE. IN ANY EVENT, DURING THE CENTURY - LONG DESUETUDE OF "ERROR OF LAW ON THE FACE OF THE RECORD", COURTS HAD ACCUSTOMED THEMSELVES TO TREATING A WIDE RANGE OF ERRORS OF LAW AND FACT AS GOING TO JURISDICTION. THIS, I SUGGEST, IS ENOUGH.

I SHOULD LIKE NOW TO RETURN TO THE QUESTION OF THE PRIVATIVE CLAUSE.

NO PRIVATIVE CLAUSE, NOTHING SHORT OF RECONSTITUTION OF OUR WHOLE JURICIAL SYSTEM, WILL PREVENT THE COURTS FROM SUPERVISING THE JURISDICTION OF INFERIOR COURTS OR STATUTORY TRIBUNALS, AS HAS BEEN DEMONSTRATED. THE PRIVATIVE CLAUSE, HOWEVER, SHOULD BE GIVEN ITS PROPER EFFECT, THAT IS, PREVENTING THE COURTS FROM SUPERVISING THE WORK OF THE BOARDS WITHIN THAT JURISDICTION. IN ATTEMPTING TO UNDERSTAND THE PROPER OPERATION OF THE PRIVATIVE CLAUSE WE SHOULD, I THINK, CONSIDER WHAT THE SITUATION WOULD BE WITHOUT ONE. IT WOULD NOT BE THE CASE THAT THE COURTS WOULD INTERFERE AT WILL.

FREELY BROUGHT HAS NEVER MEANT THAT A COURT WOULD, IN EVERY CASE, CONCERN ITSELF WITH THE MERITS OF THE CONTESTED DETERMINATION. THERE HAVE BEEN, BROADLY SPEAKING, TWO GROUNDS FOR CERTIORARI: (1) DEFECT OF JURISDICTION (IN WHICH I INCLUDE DENIAL OF NATURAL JUSTICE, AND FRAUD) AND (2) ERROR OF LAW ON THE FACT OF THE RECORD. BUT WITHOUT THE ESTABLISHMENT OF ONE OF THESE GROUNDS, THERE WOULD BE NO CERTIORARI, EVEN IN THE ABSENCE OF A PRIVATIVE CLAUSE, AND EVEN IF THE COURT CONSIDERED THE DETERMINATION TO BE WRONG. WE ALL KNOW THAT WHERE THERE IS A PRIVATIVE CLAUSE, IT DOES NOT PREVENT CERTIORARI WHERE GROUND (1) IS ESTABLISHED - DEFECT OF JURISDICTION. THE EFFECT OF A PRIVATIVE CLAUSE, THEN, MUST BE THE ELIMINATION OF GROUND (2) AS A BASIS FOR CERTIORARI. THIS INDEED SEEMS TO BE THE EFFECT OF THE JUDGMENT OF ROACH J.A. SPEAKING FOR THE ONTARIO COURT OF APPEAL IN THE BRADLEY CASE: 41

"Where the matter is not collateral but constitutes part or the whole of the main issue which the inferior tribunal had to decide, the Court is limited to examining the record to determine whether there was any evidence before the inferior tribunal. I hasten to add, however, that the Court can do that only in the absence of a privative clause. If there is a privative clause in the Act creating the tribunal, the Court cannot do that."

IN THE PARKHILL BEDDING CASE, 42 MR. JUSTICE FREEDMAN, REFERRING TO THIS PASSAGE, SPOKE OF IT AS TOUCHING UPON A DISTINCTION AS BETWEEN PRIVATIVE CLAUSES. WITH RESPECT, A DISTINCTION BASED ON THE RELATIVE EXPLICITNESS OF PRIVATIVE CLAUSES SEEMS TO ME RATHER FORCED (ASSUMING THE FORM OF WORDS IN EXPLICIT ENOUGH TO BE A PRIVATIVE CLAUSE IN THE FIRST PLACE), AND AT ANY RATE THERE IS NO SUCH DISTINCTION IN THE JUDGMENT OF ROACH J.A. WHO REFERS ONLY TO THE DISTINCTION BETWEEN THE CASE WHERE THERE IS A PRIVATIVE CLAUSE AND THE CASE WHERE THERE IS NOT. A DISTINCTION AS BETWEEN PRIVATIVE CLAUSES IS, NEVERTHELESS, BEING DRAWN BY OUR COURTS. THUS, IN THE FEDERAL ELECTRIC CASE SMITH J STATED:

"IN MY VIEW, IT IS AT LEAST DOUBTFUL THAT THE PRIVATIVE CLAUSE IN THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT (s. 61(2)), IS SUFFICIENTLY EXPRESS IN ITS TERMS TO EXCLUDE CERTIORARI WHERE THE QUESTION IS ONE OF ERROR ON THE FACE OF THE RECORD. NO PRIVATIVE CLAUSE EXCLUDES AN APPLICATION FOR CERTIORARI WHERE THE QUESTION IS ONE OF THE INFERIOR TRIBUNAL HAVING JURISDICTION, REFUSING JURISDICTION OR EXCEEDING JURISDICTION."

THE ONLY CONCLUSION LEFT, IT SEEMS TO ME, IS THAT THE PRIVATIVE CLAUSE IN THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT MEANS NOTHING, SINCE, ON SMITH J'S REASONING, IT CANNOT EXCLUDE CERTIORARI ON GROUND (1) AND IS NOT "EXPRESS" ENOUGH TO EXCLUDE IT ON GROUND (2). THE ONLY POSSIBLE

GROUND FOR OPTIMISM HERE IS THE THOUGHT THAT PRESUMABLY SOME PRIVATIVE CLAUSE MIGHT MEAN SOMETHING, AS LONG AS IT IS SUFFICIENTLY "EXPRESS". DE SMITH SUGGESTS THIS IN HIS WORK ON JUDICIAL REVIEW OF ADMINISTRATIVE ACTION, AND CITES AUSTRALIAN AND NEW ZEALAND AUTHORITY FOR THE PROPOSITION. 44 THE BRADLEY CASE, WHICH WAS CONTEMPORANEOUS WITH DE SMITH'S WORK, WOULD HAVE PROVIDED A STRONG CANADIAN AUTHORITY.

IT IS WORTH NOTING THAT IN PRINCE EDWARD ISLAND THE COURT SEES THE MERIT OF PRIVATIVE CLAUSES. IN THE JOURNAL PUBLISHING CASE, 45 IN WHICH THE COURT HELD, ON APPEAL (FOR SUCH IS THEIR PROCEDURE), REVERSING THE LABOUR RELATIONS BOARD, THAT THE CHARLOTTETOWN CHARTERED LOCAL OF THE INTARNATIONAL TYPOGRAPHICAL UNION WAS NOT A TRADE UNION WITHIN THE MEANING OF THE INDUSTRIAL RELATIONS ACT, TWEEDY J STATED:

"IT WAS ALLEGED BY COUNSEL THAT THIS IS THE ONLY PROVINCE IN CANADA THAT GIVES THIS RIGHT OF APPEAL TO THE SUPREME COURT NOR HAS THE RIGHT BEEN GIVEN BY LEGISLATURES IN THE VARIOUS STATES OF THE UNITED STATES OF AMERICA. I MIGHT DIGRESS TO SAY THAT IN MY OPINION THE INCLUSION OF SUCH A RIGHT OF APPEAL DEFEATS MANY PURPOSES OF THE ACT.

TWEEDY J. CONCLUDED HIS JUDGMENT IN THE CASE SIMPLY BY NOTING, RATHER WISTFULLY, THE PROVISIONS OF SECTION 80 OF THE ONTARIO ACT, THE PRIVATIVE CLAUSE WITH WHICH WE BEGAN.

IV.

TO ANYONE ATTEMPTING TO ANALYSE (AS FAR AS THEY ALLOW) THE CASES DECIDED IN THIS FIELD, THEIR MOST STRIKING AND DEPRESSING CHARACTERISTIC IS THE LACK OF CONSIDERATION OF THE REAL ISSUES WHICH WERE BEFORE THE COURTS IN THESE CASES. ON THE QUESTION OF JURISDICTION, FOR INSTANCE, THE REAL ISSUE, I SUGGEST, IS: WHO IS TO DETERMINE THIS SORT OF QUESTION? THE ADOPTION OF A CRITERION SUCH AS THAT SUGGESTED BY DIXON J, OR BY RAND J, WHILE IT WOULD IN ITSELF, SOLVE NO PROBLEMS, WOULD AT LEAST HAVE THE VIRTUE OF FOCUSSING OUR ATTENTION ON REAL PROBLEMS, RATHER THAN FORMS OF WORDS. EVEN ALTHOUGH THE QUESTION OF JURISDICTION MUST BE, IN THE FINAL ANALYSIS, UP TO THE COURTS, IT IS NEVERTHELESS A PROBLEM WHICH EACH OF US, IN THE COURSE OF CARRYING OUT OUR DUTIES, MUST FACE. IN THE FORM OF QUESTIONS OF NATURAL JUSTICE, I THINK, IT PRESENTS ITS MOST SERIOUS ASPECT. 46 IT WOULD BE HELPFUL TO HAVE SOME CONSIDERED JUDICIAL DETERMINATION WITH RESPECT TO PROBLEMS OF NOTICE AS THESE ARISE IN LABOUR RELATIONS MATTERS, BECAUSE THESE PROBLEMS DO ARISE IN A PECULIAR FORM IN THIS AREA. BUT THESE ARE OUR PROBLEMS EVEN BEFORE THEY GO TO THE COURTS, AND WE MUST CONSTANTLY REMIND OURSELVES THAT, COULD WE BUT ACHIEVE A JUST EQUILIBRIUM BETWEEN THE DEMANDS OF EFFICIENCY AND GENERAL JUSTICE ON THE ONE HAND, AND THE RIGHTS OF THE INDIVIDUAL AND PARTICULAR JUSTICE ON THE OTHER, THEN JUDICIAL REVIEW OF OUR PROCEEDINGS WOULD BE SUPERFLUOUS.

NOTES

1. THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, s. 80.

- 2. There is no privative clause in The Alberta Labour Act, S.A. 1959, c. 42, but see s. 70a of that Act, S.A. 1960, c. 54, s. 19. The powers of the British Columbia Labour Relations Board to make "final and conclusive" decisions are set out in s. 65 of The Labour Relations Act, R.S.B.C. 1960, c. 205, as amended. The powers of the British Columbia Labour Relations Board to make "final and conclusive" decisions are set out in s. 65 of The Labour Relations Act, R.S.B.C. 1960, c. 205, as amended. The Prince Edward Island Legislation is unique: see N. 45, infra.
- 3. THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, s. 79.
- 4. LABOUR RELATIONS BOARD OF SASKATCHEWAN V. JOHN EAST IRON WORKS LTD., [1949] A.C. 134, [1948] 4 D.C.R. 673.
- 5. R. v. O.L.R.B., EX PARTE TAYLOR (1964), 41 D.L.R. (2d) 456.
- Laskin, Certiorari to Labour Boards: The Apparent Futility of Privative Clauses (1952), 30 Can. Bar Rev. 986.
- 7. WILLIS, ADMINISTRATIVE LAW IN CANADA (1961), 39 CAN. BAR REV. 258.
- 8. Jarvis v. Associated Medical Services 35 D.L.R. (2) 375, 380 (Ont. C.A.) per Aylesworth J.A. The decision was affirmed by the Supreme Court of Canada (1964) 44 D.L.R. (2D) 407, and these remarks were adopted by Cartwright J. at p. 411.
- 9. R. v. O.L.R.B., EX PARTE C.U.P.E. LOCAL 453 (1964), 45 D.L.R. (2D) 202 (ONT.).
- 10. R.S.O. 1960, c. 298, s. 13.
- 11. R. v. O.L.R.B. EX PARTE ONT. FOOD TERMINAL BOARD (1963), 38
  D.L.R. (2D) 530, 532 (ONT. C.A.).
- 12. IDEM.
- 13. (1963) 41 CAN. BAR REV. 446.
- 14. Supra, N. 5. See also the remarks of Haines, J. IN ARMSTRONG TRANSPORT V. INT'L BROTHERHOOD OF TEAMSTERS (1963) 64 C.L.L.C. 804. (ONT.).
- 15. SUPRA, N. 8 AT P. 412.
- 16. SUPRA, N. 13.
- 17. SUPRA, N. 8. SPENCE J., WHO DISSENTED IN THE RESULT, AGREED WITH THE MAJORITY ON THIS POINT.
- 18. SUPRA, N.1.
- 19. SEE N. 9, SUPRA.

- 20. SEE N. 8, SUPRA.
- 21. LABOUR RELATIONS BOARD AND ATT'Y-GEN. FOR B.C. v. TRADERS' SERVICE LTD. (1958), 15 D.L.R. (2D) 305 (S.C.C.).
- 22. Some of the court's Language in the White Lunch case (1963) 42 D.L.R. (2D) 364 (B.C.) is surely suspect in view of the Trader's Service decision.
- 23. LABOUR RELATIONS BOARD OF BRITISH COLUMBIA V. OLIVER CO-OPERATIVE
  GROWERS EXCHANGE AND OKANAGAN FEDERATED SHIPPING ASSOCIATION. (1962)
  35 D.L.R. (2D) 694. (S.C.C.). SEE ALSO RE HAMILTON CONSTRUCTION
  ASSOCIATION & BUILDERS' EXCHANGE AND ONTARIO LABOUR RELATIONS BOARD
  (1963) 39 D.L.R. (2D) 338 (ONT.).
- 24. RE WESTEEL PRODUCTS LTD. AND SASKATCHEWAN LABOUR RELATIONS BOARD (1963) 39 D.L.R. (2D) 108 (SASK. C.A.). SEE ALSO R. V. LABOUR RELATIONS BOARD (B.C.) EX PARTE PULP AND PAPER WORKERS OF CANADA, WATSON ISLAND, LOCAL NO. 4 (1964) 45 D.L.R. (2D) 437 (B.C.).

  THE EXCLUSIVE JURISDICTION OF THE BRITISH COLUMBIA LABOUR RELATIONS BOARD TO DETERMINE THE QUESTION WHETHER A MATTER IS ARBITRABLE WAS CONFIRMED IN RE GALLOWAY LUMBER CO. LTD. AND BRITISH COLUMBIA LABOUR RELATIONS BOARD (1965) 48 D.L.R. (2D) 587 (S.C.C.).
- 25. SEE RE ONTARIO LABOUR RELATIONS BOARD, BRADLEY V. CANADIAN GENERAL ELECTRIC CO. LTD. (1957), 8 D.L.R. (2D) 65, 72 (ONT. C.A.).
- 26. THE KING V. HICKMAN, EX PARTE FOX AND CLINTON (1945) 70 C.L.R.
  598, 614-5. A SIMILAR TEST WAS SUGGESTED TO CANADIANS BY RAND J.
  IN HIS DISSENTING JUDGMENT IN TORONTO NEWSPAPER GUILD V. GLOBE
  PRINTING CO. [1953] 3 D.L.R. 561, 572-3 (S.C.C.): "-- IS THE ACTION
  OR DECISION WITHIN ANY RATIONAL COMPASS THAT CAN BE ATTRIBUTED TO THE
  STATUTORY LANGUAGE?"
- 27. SUPRA, N. 8.
- 28. PARKHILL BEDDING & FURNITURE LTD. V. INTERNATIONAL MOLDERS & FOUNDRY
  WORKERS UNION OF NORTH AMERICA, LOCAL 174 AND MANITOBA LABOUR BOARD.
  (1961) 26 D.L.R. (2D) (MAN. C.A.).
- 29. R. v. Com'rs for Special Purposes of Income Tax Act (1888), 21
- 30. SUPRA. N. 25. CP. DE SMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION (1959) 72, 73:

"WE HAVE HITHERTO CONSIDERED ONLY TWO CLASSES OF SITUATIONS: (I) A TRIBUNAL HAS TO INQUIRE INTO A QUESTION, AND ITS FINDINGS THEREON ARE CONCLUSIVE BECAUSE THEY ARE NOT PRELIMINARY OR COLLATERAL TO THE MERITS; (II) A TRIBUNAL HAS TO INQUIRE INTO A QUESTION AND ITS FINDS THEREON

ARE REVIEWABLE BECAUSE THEY ARE PRELIMINARY OR COLLATERAL TO THE MERITS. BUT THERE IS A THIRD CLASS OF SITUATION: A TRIBUNAL HAS TO INQUIRE INTO A QUESTION WHICH IS PRELIMINARY OR COLLATERAL, BUT ITS FINDINGS THEREON ARE CONCLUSIVE BECAUSE OF THE WORDING OF THE RELEVANT LEGISLATION — E.G., WHERE A MATTER COLLATERAL TO THE MERITS IS TO BE PROVED 'TO THE SATISFACTION OF' THE COMPETENT AUTHORITY. THE SCOPE OF JUDICIAL REVIEW IN THIRD CLASS OF SITUATION IS THE SAME AS IN THE FIRST CLASS OF SITUATION, AND THE TWO ARE OFTEN CONFUSED WITH EACH OTHER, ALTHOUGH THEY ARE ANALYTICALLY DISTINCT."

- 31. FOREST INDUSTRIAL RELATIONS LTD. V. INT'L UNION OF OPERATING ENGINEERS, LOCAL 882, (1961) 31 D.L.R. (2D) 319 (S.C.C.).
- 32. ID., AT P. 321.
- 33. R. v. LABOUR RELATIONS BOARD (B.C.); EX PARTE LOOMIS ARMORED CAT SERVIC-LTD. (1963) 42 D.L.R. (2D) 49 (B.C.).
- 34. JIM PATRICK LTD. V. UNITED STONE & ALLIED PRODUCTS WORKERS OF AMERICA, LOCAL NO. 189, AFL-CIO. (1959), 21 D.L.R. (2D) 189 (SASK. C.A.).
- 35. R. v. O.L.R.B., EX PARTE TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL 52 (1963) 39 D.L.R. (2D) 593 (ONT.).
- Thus, Balfour J. in R. v. Saskatchewan Labour Relations Board, EY PAFIL Dickl (1963) 41 D.L.R. (2D) 79, 85 (Sask. Q.B.): "In dealing with an application for a writ of certiorari, and having regard to the privative clause, it appears to me that the decisions of the Board are not open to judicial review, including certiorari, even if there was error in matter of fact or in law and that I am restricted to determine whether or not the Board acted within its jurisdiction or whether there is error of L/ON the face of the record."
- 37. R. v. Labour Relations Board of Sask., EX PARTE TAG'S PLUMBING AND HEATING LTD. (1962) 34 D.L.R. (2D) 128 (SASK. C.A.).
- 38. Supra, N. 4. See also MacCosham Storage & Distributing Co. (Saskatche Ltd. v. Canadian Brotherhood of Railway Employees and Other Transport Workers, Division No. 189. 14 D.L.R. (2D) 725 (Sask. C.A.).
- 39. R. v. Northumberland Compensation Appeal Tribunal, EX p. Shaw [1951] IK. B. 711, AFF D. [1952] I K. B. 338 (C.A.).
- 40. R. v. NAT BELL LIQUORS LTD. [1922] 2 A.C. 128, 159.
- 41. SUPRA, N. 25.
- 42. SUPRA, N. 28.

- 43. R. V. CANADA LABOUR RELATIONS BOARD, EX. PARTE FEDERAL ELECTRIC CORPORATION (1964) 44 D.L.R. (2D) 440, 458, (MAN. Q.B.).
- 44. DE SMITH, OP. CIT. SUPRA, N. 30, AT P. 228 N.
- 45. JOURNAL PUBLISHING CO. LTD. V. CHARLOTTETOWN TYPOGRAPHICAL UNION, LOCAL 963 (1964) 44 D.L.R. (2D) 711 (P.E.I. S.C.).
- 46. SEE FINKELMAN, THE ONTARIO LABOUR RELATIONS BOARD AND NATURAL JUSTICE (1965) QUEENS UNIVERSITY INDUSTRIAL RELATIONS CENTRE, REPRINT SERIES No. 7.



ONTARIO LABOUR RELATIONS BOARD



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#### APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

## DURING DECEMBER 1965

### BARGAINING AGENTS CERTIFIED DURING DECEMBER

### No VOTE CONDUCTED

10669-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union No. 837 (Applicant) v. Penvidic Contracting Co. Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (28 EMPLOYEES IN THE UNIT).

10829-65-R: Local 18, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Reel-Pack Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (39 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 629 ).

10847-65-R: Building Service Employees' International Union, Local 204 AFL-C10., CLC (Applicant) v. St. Andrews Hospital (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT MIDLAND, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification which came on for hearing in the first instance on October 5th, 1965.

AT THE FIRST HEARING THE OBJECTORS CALLED THREE WITNESSES, MRS. OKENKA, MRS. A. WILCOX AND MRS. JEAN WILCOX, WHO TESTIFIED THAT THEY HAD KNOWLEDGE CONCERNING EITHER THE ORIGINATION, PREPARATION OR CIRCULATION OF THE TWO DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION. ONE OF THE DOCUMENTS WAS A TYPEWRITTEN STATEMENT OF DESIRE, THE OTHER DOCUMENT WAS A HANDWRITTEN STATEMENT OF DESIRE AND EACH STATEMENT BORE A NUMBER OF SIGNATURES OF EMPLOYEES. SINCE THE

BOARD HAD NOT AS YET DETERMINED THAT THE PETITIONS WERE FILED PURSUANT TO THE PROVISIONS OF SECTION 11 AND SECTION 50 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD DID NOT COMPLETE ITS INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS AT THE HEARING. HOWEVER THE THREE WITNESSES WERE ADVISED THAT IF THE BOARD DETERMINED THAT IT SHOULD MAKE ITS USUAL INQUIRY, THE THREE WITNESSES WOULD HAVE TO RE-ATTEND ANY SUBSEQUENT HEARING AND TESTIFY CONCERNING THEIR KNOWLEDGE OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS FILED.

FOLLOWING THE BOARD'S DECISION DATED OCTOBER 29TH, 1965, IN THIS MATTER, WHEREIN THE BOARD DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING, THE REGISTRAR NOTIFIED THE PARTIES THAT "THE BOARD WILL CONDUCT ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION, AND ALL OTHER OUTSTANDING ISSUES". This MATTER CAME ON FOR CONTINUATION OF HEARING ON NOVEMBER 23, 1965.

AT THE HEARING OF NOVEMBER 23, 1965, MRS. OKENKA AND MRS. A. WILCOX TESTIFIED CONCERNING THEIR KNOWLEDGE OF THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS. HOWEVER, WHILE MRS. JEAN WILCOX WAS PRESENT AT THE HEARING, THE OBJECTORS, FOR REASONS BEST KNOWN TO THEMSELVES, DID NOT CALL MRS. JEAN WILCOX TO TESTIFY CONCERNING HER KNOWLEDGE OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS FILED.

MRS. A. WILCOX TESTIFIED THAT SHE HAD NO KNOWLEDGE AS TO THE ORIGINATION OF THE TYPEWRITTEN PETITION OR AS TO HOW IT WAS CIRCULATED. HOWEVER, SHE TESTIFIED THAT THE HEADING ON THE HAND-WRITTEN PETITION PREPARED BY HER, WAS COPIED FROM THE TYPEWRITTEN PETITION FILED IN THIS MATTER. SHE FURTHER TESTIFIED THAT THE ONLY KNOWLEDGE SHE HAD AS TO HOW THE TYPEWRITTEN PETITION CAME INTO EXISTENCE WAS GAINED BY LISTENING TO THE EVIDENCE WHICH WAS ADDUCED BEFORE THE BOARD.

MRS. OKENKA TESTIFIED THAT, FOLLOWING THE POSTING OF THE NOTICE TO THE EMPLOYEES OF THIS APPLICATION, SHE HAD A DISCUSSION WITH MRS. JEAN WILCOX. MRS. JEAN WILCOX WROTE OUT A PETITION IN OPPOSITION TO THE APPLICATION IN HER PRESENCE AND SUBSEQUENTLY MRS. JEAN WILCOX TOOK THE PETITION TO ONE OF THE OFFICE EMPLOYEES OF THE RESPONDENT IN ORDER TO HAVE THE DOCUMENT TYPED. MRS. JEAN WILCOX APPARENTLY ACCOMPANIED MRS. OKENKA WHILE TWO OF THE EMPLOYEES SIGNED THE DOCUMENT AND IN THE ABSENCE OF MRS. OKENKA WITNESSED SEVEN ADDITIONAL SIGNATURES. MRS. OKENKA TESTIFIED THAT SHE HERSELF HAD WITNESSES A TOTAL OF NINE SIGNATURES IN ADDITION TO THOSE OBTAINED IN THE PRESENCE OF MRS. JEAN WILCOX. IT WOULD FURTHER APPEAR THAT MRS. OKENKA ACCOMPANIED MRS. JEAN WILCOX TO THE POST OFFICE WHEN MRS. JEAN WILCOX MAILED THE PETITION TO THIS BOARD.

WHILE THE EVIDENCE OF MRS. OKENKA INDICATES THAT WHILE SHE WAS PRESENT WHEN THE DRAFT OF THE TYPEWRITTEN DOCUMENT WAS WRITTEN BY MRS. JEAN WILCOX, WE ARE IMPELLED TO FIND THAT IT WAS MRS. JEAN WILCOX WHO WAS THE PRIME MOVER IN THE ORIGINATION OF THE TYPEWRITTEN DOCUMENT. SINCE MRS. JEAN WILCOX WAS NOT CALLED TO TESTIFY CONCERNING ALL THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE TYPEWRITTEN DOCUMENT INCLUDING THE CONVERSATIONS, IF ANY, SHE MAY HAVE HAD WITH MEMBERS OF MANAGEMENT, THERE IS A VERY SERIOUS VOID IN THE EVIDENCE OF THE OBJECTORS CONCERNING THE ORIGINATION OF THE TYPEWRITTEN DOCUMENT.

SINCE IT IS APPARENT THAT THE PETITION DRAFTED BY MRS.

A. WILCOX WAS SPAWNED BY THE TYPEWRITTEN DOCUMENT, ANY DEFECT
IN THE EVIDENCE CONCERNING THE ORIGINATION OF THE TYPEWRITTEN
DOCUMENT MUST FLOW TO THE HANDWRITTEN DOCUMENT PREPARED BY MRS.

A. WILCOX.

HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE STAFFORD FOODS LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL, 1965, P. 63, THE CHERNEY BROS. LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY, 1965, P. 525 AND WEYERHAEUSER CANADA LIMITED CASE, O.L. R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 599, WE FIND THAT THE OBJECTORS HAVE NOT SATISFIED THE BOARD CONCERNING THE ORIGINATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION AND ACCORDINGLY WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

BOARD MEMBER R. W. TEAGLE DISSENTED AND SAID:-

" | DISSENT.

I DISAGREE WITH THE MAJORITY DECISION THAT NO WEIGHT BE GIVEN TO THE PETITIONS IN THIS CASE. AT THE FIRST HEARING, MRS. JEAN WILCOX IDENTIFIED THE TYPEWRITTEN PETITION AND CERTAIN SIGNATURES THEREON. AT THE SECOND HEARING MRS. OKENKA TESTIFIED THAT SHE AND MRS. JEAN WILCOX WERE IN THIS TOGETHER AND SHE HELPED DRAFT THE WORDING ON THE PETITION.

IN MY OPINION THE ORIGINATION OF THE PETITION HAS BEEN SUFFICIENTLY ESTABLISHED FOR THE BOARD'S PURPOSES.

FOR THE ABOVE REASONS | WOULD HAVE DIRECTED THAT A VOTE BE ORDERED."

10866-65-4: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS 47 ORFUS ROAD PLANT, IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (92 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN THIS APPLICATION THE APPLICANT TAKES THE POSITION THAT ALL EMPLOYEES OF THE RESPONDENT AT 47 ORFUS ROAD, TORONTO, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, WHEREAS THE RESPONDENT TAKES THE POSITION THAT THE APPROPRIATE UNIT WOULD INCLUDE ALL THE EMPLOYEES AT BOTH 260 LAUGHTON AVENUE AND 47 ORFUS ROAD PLANTS AT TORONTO.

Subsequent to the appointment of an Examiner, who was authorized to inquire into and report to the Board on the composition of the bargaining unit in this matter, the parties agreed that a statement of fact, prepared by the respondent as modified by the respondent's letter dated November 22nd, 1965, constitutes the facts upon which the Board should make its determination.

HAVING REGARD TO ALL THE FACTS SET OUT IN THE TWO DOCU-MENTS REFERRED TO, THE BOARD IS OF OPINION THAT THE EMPLOYEES AT EACH PLANT OF THE RESPONDENT FORM A SEPARATE APPROPRIATE BARGAIN-ING UNIT IN THE CIRCUMSTANCES OF THIS CASE.

IN ARRIVING AT ITS DECISION, THE BOARD HAS TAKEN INTO CONSIDERATION THE FACTS THAT THE TWO PLANTS IN QUESTION ARE PHYSICALLY SEPARATED BY SEVERAL MILES, THAT THE DIRECT SUPERVISION OF EMPLOYEES IN EACH OF THE PLANTS IS SEPARATE, FROM THE RANK OF PLANT MANAGER DOWN, AND THAT THERE IS VIRTUALLY NO INTERCHANGE OF EMPLOYEES BETWEEN THE TWO PLANTS.

THE BOARD ALSO NOTES THAT THE PARTIES HAVE AGREED THAT THE EMPLOYEES IN A THIRD PLANT, LOCATED ON ALLIANCE AVENUE, IN TORONTO, CONSTITUTE A SEPARATE BARGAINING UNIT.

IT APPEARS THAT THE RESPONDENT'S MAIN ARGUMENT IN SUPPORT OF ITS POSITION THAT THE TWO PLANTS FORM ONE BARGAINING UNIT IS BASED UPON THE FACT THAT THERE IS AN INTERCHANGE IN GOODS PRODUCED AT THE ORFUS ROAD AND LAUGHTON AVENUE PLANTS. THE MANUFACTURE OF CERTAIN ITEMS MAY BE COMMENCED AT ONE PLANT, THE GOODS ARE THEN TRANSPORTED TO A SECOND PLANT FOR FURTHER PROCESSING AND ARE RETURNED TO THE ORIGINAL PLANT FOR THE COMPLETION OF THEIR MANUFACTURE. THIS ALONE IS NOT IN OUR OPINION SUFFICIENT TO WARRANT A FINDING THAT BOTH PLANTS, IN THE CIRCUMSTANCES OF THIS CASE, CONSTITUTE ONE BARGAINING UNIT.

THE BOARD IS OF OPINION THAT, IN THE CIRCUMSTANCES OF THIS CASE, A FINDING OF TWO SEPARATE BARGAINING UNITS WOULD IN NO WAY CAUSE SUBSTANTIAL INTERFERENCE WITH THE METHOD OF PRODUCTION PRESENTLY CARRIED ON BY THE RESPONDENT."

10896-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS! UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. COMBINED ROMAN CATHOLIC SEPARATE SCHOOL, 2 & 3, GARSON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GARSON, SAVE AND EXCEPT PROFESSIONAL TEACHING STAFF AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

10917-65-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE TOWNSHIP OF NEPEAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

10930-65-R: Union of Canadian Retail Employees C.L.C. (Applicant) v. Super City Discount Foods Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE RESPONDENT REQUESTED THE EXCLUSIONS FROM THE BARGAINING UNIT OF JIM GENTILE AND RONALD O'RIELLY, PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT MANAGERS. HOWEVER, IT APPEARS FROM THE EXAMINER'S REPORT ON THE DUTIES AND RESPONSIBILITIES OF MR. GENTILE, WHOM THE PARTIES AGREE HAS THE SAME RESPONSIBILITIES AS MR. O'RIELLY, THAT MANY OF THE MANAGERIAL FUNCTIONS WHICH HE CLAIMS HAVE BEEN ASSIGNED TO HIM HAVE NEVER BEEN EXERCISED BY HIM.

IN ADDITION, HIS POWER OF RECOMMENDATION ON HIS OWN TESTIMONY IS NOT EFFECTIVE. WHEN ASKED WHETHER OR NOT, HAVING EXAMINED
THE APPLICATIONS OF TWO PERSONS WHO APPLIED FOR WORK, HE WOULD HAVE
AUTHORITY TO RECOMMEND ONE OF THE EMPLOYEES TO THE STORE MANAGER TO
BE HIRED, MR. GENTILE, ANSWERED "YES, WHETHER HE WOULD GO FOR IT
WAS ANOTHER MATTER". ON ANOTHER OCCASION, WHEN ASKED WHETHER HIS
OPINION AS TO WHAT PERSONS SHOULD BE LAID OFF WOULD BE SPECIFICALLY
SOUGHT, MR. GENTILE REPLIED THAT HIS OPINION WOULD NOT BE "SPECIFICALLY SOUGHT" BUT THAT HE WOULD MAKE SUGGESTIONS AND THE STORE MANAGER
WOULD THEN AGREE OR DISAGREE. ON THE WHOLE OF THE EVIDENCE WE WOULD
THEREFORE FIND THAT MR. GENTILE AND MR. O'RIELLY DO NOT HAVE POWER
TO MAKE EFFECTIVE RECOMMENDATIONS.

IT WOULD ALSO APPEAR, FROM THE EXAMINER'S REPORT, THAT
NEITHER MR. GENTILE NOR MR. O'RIELLY HAVE THE POWER TO TAKE INDEPENDENT ACTION. SUCH DUTIES AS THEY IN FACT EXERCISE ARE NORMALLY
EXERCISED AFTER THE PRIOR APPROVAL OF THE STORE MANAGER.

WHILE AT ONE STAGE IN THE EXAMINER'S REPORT IT WOULD APPEAR THAT THE ASSISTANT MANAGERS SPEND 50% OF THEIR WORKING DAY ON SUPERVISORY FUNCTIONS, WHEN ASKED TO CLARIFY THE PORTIONS OF THE TIME HE SPENDS ON VARIOUS DUTIES MR. GENTILE SAID THAT ABOUT 50% OF THE DAY INVOLVES PHYSICAL WORK AND THAT A PORTION VARYING BETWEEN "10% OR PERHAPS SOMETIMES AS MUCH AS 20% WOULD BE INVOLVED IN PAPER WORK AND 10 TO 15% WOULD BE INVOLVED IN WATCHING THE FRONT OF THE STORE AND SEEING THAT CUSTOMER SERVICE WAS MAINTAINED ETC." THE ONLY PORTION OF MR. GENTILE'S DUTIES THAT WERE BROKEN DOWN AS TO TIME SPENT, WITH THOSE FUNCTIONS WHICH WERE CLAIMED TO BE SUPERVISORY DUTIES. EVEN WHEN TAKING THE MAXIMUM TIMES SUGGESTED, THE TOTAL TIME SPENT ON THE ALLEGED SUPERVISORY DUTIES WOULD BE 35%.

WHILE IT CAN BE SAID THAT THE DUTIES AND RESPONSIBILITIES OF THE ASSISTANT MANAGERS CONSTITUTE A BORDER-LINE CASE FOR THE PURPOSES OF DETERMINING WHETHER THEY ARE ELIGIBILE FOR INCLUSION IN THE BARGAINING UNIT; HAVING REGARD TO THE FACT THAT ALL THE EVIDENCE CAME FROM AN ASSISTANT MANAGER WHO IS CLAIMED BY THE RESPONDENT TO EXERCISE MANAGERIAL FUNCTIONS, WE ARE IMPELLED TO FIND THAT WHILE THE SUPERVISORY DUTIES ARE OF THE NATURE OF THOSE EXERCISED BY A "LEAD HAND" THERE ARE NOT MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT.

FOR THE PURPOSES OF CLARITY WE ACCORDINGLY FIND THAT JIM GENTILE AND RONALD O'RIELLY, PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT MANAGERS, DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE ACT AND ARE INCLUDED IN THE BARGAINING UNIT."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" DISSENT.

IN TESTIMONY BEFORE THE EXAMINER, JIM GENTILE, ONE OF THE TWO ASSISTANT MANAGERS, CONFIRMED THAT THERE ARE TIMES WHEN MR. WHEELER, THE STORE MANAGER IS AWAY, SUCH AS ON HIS DAY OFF OR AT NIGHTS, AND HE (GENTILE) IS RESPONSIBLE FOR THE WHOLE STORE FUNCTION. THIS EVIDENCE IS NOT CONTRADICTED IN ANY WAY. SURELY THIS IS A MANAGEMENT FUNCTION AND CONSEQUENTLY, I MUST FIND THAT THE TWO ASSISTANT MANAGERS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE ACT, AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT."

10959-65-R: United Glass and Ceramic Workers of North America (Applicant) v. IMCO Container (Canada) Ltd. (Resoondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (100 EMPLOYEES IN THE UNIT).

11067-65-R: BOOT AND SHOE WORKERS UNION, AFFILIATED WITH A.F. OF L.-C.1.0.-C.L.C. (APPLICANT) v. BROWN SHOE COMPANY OF CANADA LTD. (RESPONDENT) v. ALEXANDRIA SHOE EMPLOYEES BENEFIT ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ALEXANDRIA, SAVE AND EXCEPT ASSISTANT FOREMEN, FITTING FLOOR LADIES, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND FITTING FLOOR LADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (95 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification made on November 8th, 1965, wherein the applicant requested that a pre-hearing representation vote be taken.

AN INTERVENTION WAS FILED IN THIS MATTER BY THE ALEXANDRIA SHOE EMPLOYEES BENEFIT ASSOCIATION WHEREIN THE INTERVENER CLAIMED TO REPRESENT THE EMPLOYEES PURSUANT TO A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH WAS TO BE IN EFFECT FOR A PERIOD OF TWO YEARS UNTIL JANUARY 1ST, 1966.

AT THE PRE-HEARING VOTE MEETING THE APPLICANT CHALLENGED THE STATUS OF THE INTERVENER AND THE BOARD, PURSUANT TO ITS USUAL PRACTICE IN SIMILAR CASES, DENIED THE APPLICANT'S REQUEST FOR A PRE-HEARING REPRESENTATION VOTE AND DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR HEARING IN ORDER TO INQUIRE INTO THE STATUS OF THE INTER-VENER AND ALL OTHER OUTSTANDING ISSUES.

IT APPEARS FROM THE EVIDENCE THAT THE INTERVENER HAS NO CONSTITUTION, MINUTES OF MEETINGS OR BY-LAWS OR ANY OTHER DOCUMENT WHICH WOULD EVIDENCE ITS EXISTENCE AS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.

THE INTERVENER HAS TWO OFFICERS, A PRESIDENT AND A SECRETARY-TREASURER, WHO WERE ELECTED BY SOME OF THE EMPLOYEES OF THE RESPONDENT. THE INTERVENER HAD NO RECORD OF ITS MEMBERS UNTIL THE RESPONDENT DELIVERED TO THE INTERVENER A LIST OF EMPLOYEES WHO PAID ASSOCIATION DUES TO THE INTERVENER FOR THE MONTH OF DECEMBER, 1965, PURSUANT TO AN "AUTHORIZATION FOR ASSIGNMENT OF WAGES FOR PAYMENT OF ASSOCIATION FEES" CARD SIGNED BY THE EMPLOYEES CONCERNED. THIS ASSIGNMENT OF WAGES CARD READS AS FOLLOWS:

"I, THE UNDERSIGNED, HEREBY AUTHORIZE
BROWN SHOE Co. OF CANADA, LTD., TO DEDUCT FROM
MY WAGES AN AMOUNT EQUIBALENT TO THE REGULAR
MONTHLY ASSOC. FEES ESTABLISHED BY THE ASSOCIATION AND REMIT SAME TO THE TREASURER OF THE
ASSOCIATION."

THE MEMBERS OF THE ASSOCIATION WERE GIVEN A MEMBERSHIP CARD IN THE "ALEXANDRIA BENEFIT ASSOCIATION" AND SUCH CARDS WERE SIGNED BY THE PRESIDENT OR BY THE PRESIDENT AND THE SECRETARY-TREASURER. APART FROM THE MEMBERSHIP CARD, THERE WAS NO OTHER DOCUMENT ISSUED BY THE INTERVENER AND THE INTERVENER KEPT NO RECORDS OTHER THAN ITS CURRENT ACCOUNT AT A BANK.

THE BOARD HAS CONSISTENTLY REQUIRED THAT AN ORGANIZATION WHICH WISHES TO BE RECOGNIZED AS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT, HAVE SOME DOCUMENT EVIDENCING ITS EXISTENCE AS A TRADE UNION IN ORDER THAT THE BOARD OR A PROSPECTIVE MEMBER MAY DETERMINE THE CORRECT NAME OF THE ORGANIZATION, WHAT THE OBJECTS OF THE ORGANIZATION ARE, WHAT PROCEDURES ARE AVAILABLE FOR ELECTION OF OFFICERS, (WHAT THE REQUIREMENTS ARE TO BECOME A MEMBER,) WHAT PROVISIONS THERE ARE FOR DUES AND OTHER ASSESSMENTS AND GENERALLY ALL OTHER RELATED MATTERS NECESSARY TO CONSTITUTE AN ORGANIZATION AS A TRADE UNION.

In the absence of such document in the form of a constitution, by-laws, minutes of meetings etc., the Board finds that the intervener is not a trade union within the meaning of section 1 (1) (J) of the Labour Relations Act."

11077-65-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 (APPLICANT) v. ROOTES MOTORS (CANADA) LTD. (RESPONDENT) v. INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (INTERVENER).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND CAR SALESMEN."

(58 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) HAVE ABANDONED THEIR BARGAINING RIGHTS AND THE BOARD DECLARES THAT THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) NO LONGER REPRESENTS THE EMPLOYEES OF ROOTES MOTORS (CANADA) LTD., IN METROPOLITAN TORONTO, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

11084-65-R: Building Service Employees' International Union No. 204, AFL CIO CLC (Applicant) v. Adel Building Corporation Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE KNIGHT BUILDING, 25
ADELAIDE STREET WEST, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK
OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT).

11089-65-R: Local 773 of the International Brotherhood of Electrical Workers (A.F. of L.-C.1.0.-C.L.C.) (Applicant) v. Industrial Machine Controls (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN WINDSOR, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

11092-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. ARGO CLEANERS (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMEN AND FORELADY, DRIVERS, DRIVER SALESMEN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IT APPEARS FROM THE EVIDENCE THAT MR. WHITE, AN OFFICER OF THE RESPONDENT, HAD CIRCULATED A DOCUMENT IN OPPOSITION TO THIS APPLICATION AND HAD OBTAINED THE SIGNATURES OF CERTAIN EMPLOYEES OF THE RESPONDENT. MRS. QUELLETTE, AN EMPLOYEE OF THE RESPONDENT, WAS REQUESTED BY MR. WHITE TO SIGN THE DOCUMENT, HOWEVER, SHE TESTIFIED THAT SHE REFUSED TO SIGN APPARENTLY BECAUSE SHE WAS AWARE THAT SUCH A DOCUMENT SHOULD NOT HAVE BEEN CIRCULATED BY MR. WHITE. MRS. QUELLETTE FURTHER TESTIFIED THAT LATER THAT DAY (EITHER NOVEMBER 18TH, OR NOVEMBER 19TH, 1965) SHE SAW MR. WHITE TEAR UP THE DOCUMENT AND ASSUMED HE DID SO BECAUSE "HE FIGURED OUT HIMSELF THAT IT WAS NO GOOD". MRS. QUELLETTE ALSO ADMITTED CONTACTING MESSRS. ZERRON & ZERRON, THE WINDSOR SOLICITORS WHO FORWARDED THE RESPONDENT'S REPLY TO THE APPLICATION.

ON MONDAY, NOVENBER 22ND, 1965, ANOTHER DOCUMENT IN OPPOSITION TO THIS APPLICATION WAS PREPARED BY MRS. QUELLETTE. AFTER OBTAINING SIGNATURES ON THE SECOND DOCUMENT MRS. QUELLETTE CAUSED THE DOCUMENT TO BE MAILED TO THE BOARD.

IN VIEW OF THE CIRCUMSTANCES WHICH LED UP TO THE ORIGINATION AND PREPARATION OF THE DOCUMENT SUBMITTED TO THE BOARD, BY MRS. QUELLETTE, AS INDICATIVE OF OPPOSITION, BY SOME OF THE EMPLOYEES OF THE RESPONDENT, TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE."

11098-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT INCHOIS FALLS ENGAGED IN CLEANING AND CARETAKING, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

11102-65-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197 (APPLICANT) v. HANRAHAN'S TAVERN (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES OF THE RESPONDENT COVERED BY THE TERMS OF AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (10 EMPLOYEES IN THE UNIT).

11103-65-R: Local 280 of the Hotel & Restaurant Employees' and Bartenders'
International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Gold & Kay Investment Limited
Known as (Wheat Sheaf Public House) (Respondent).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATION AT TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (3 EMPLOYEES IN THE UNIT).

11105-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) v. ANDRE KNIGHT LIMITED (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES).

11106-65-R: General Truck Drivers' Union, Local 879, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Noakes Transport Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF BRANTFORD, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

11107-65-R: BrickLayers', Masons' and Plasterers' International Union, Local No. 33 (Applicant) v. Lexington Contracting Limited (Respondent).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OWEN SOUND AND MEAFORD AND THE TOWN-SHIPS OF KEPPEL, SARAWAK, DERBY, SYDENHAM AND ST. VINCENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE APPLICANT HAS PROPOSED THE COUNTIES OF GREY AND BRUCE AS AN APPROPRIATE GEOGRAPHIC AREA AND IN SUPPORT THEREOF RELIES ON A VOLUNTARY RECOGNITION STATEMENT SIGNED BY TWO EMPLOYERS. THE BOARD NOTES THAT THE PROPOSED AREA OVERLAPS AN ESTABLISHED BOARD AREA BY THE INCLUSION OF THE COUNTY OF BRUCE. THE BOARD IS NOT PREPARED AT THIS TIME TO ESTABLISH A NEW GEOGRAPHIC AREA WHICH WOULD INCLUDE ALL OR PART OF THE COUNTY OF GREY. IN THESE CIRCUMSTANCES, AND AS A PURELY INTERIM MEASURE, THE BOARD FINDS THE AREA GRANTED TO BE APPROPRIATE.

11108-65-R: BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL No. 33 (APPLICANT) v. JIM FOULDS CONSTRUCTION LIMITED (RESPONDENT).

Unit: "ALL BRICKLAYERS AND BRICKLAYERS! APPRENTICES, STONEMASONS AND STONEMASONS!

APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OWEN SOUND AND MEAFORD AND THE

TOWNSHIPS OF KEPPEL, SARAWAK, DERBY, SYDENHAM AND ST. VINCENT IN THE COUNTY OF

GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING

FOREMAN." (2 EMPLOYEES IN THE UNIT).

THE APPLICANT HAS PROPOSED THE COUNTIES OF GREY AND BRUCE AS AN APPROPRIATE GEOGRAPHIC AREA AND IN SUPPORT THEREOF RELIED ON A VOLUNTARY RECOGNITION STATEMENT SIGNED BY TWO EMPLOYERS. THE BOARD NOTES THAT THE PROPOSED AREA OVERLAPS AN ESTABLISHED BOARD AREA BY THE INCLUSION OF THE COUNTY OF BRUCE. THE BOARD IS NOT PREPARED AT THIS TIME TO ESTABLISH A NEW GEOGRAPHIC AREA WHICH WOULD INCLUDE ALL OR PART OF THE COUNTY OF GREY. IN THESE CIRCUMSTANCES, AND AS A PURELY INTERIM MEASURE. THE BOARD FINDS THE AREA GRANTED TO BE APPROPRIATE.

11109-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. Prescriptions Services Inc. (Respondent).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS OFFICES AT WINDSOR, ONTARIO, SAVE AND EXCEPT: DEPARTMENT HEADS AND THOSE ABOVE THE RANK OF DEPARTMENT HEAD, CONFIDENTIAL SECRETARY TO THE PRESIDENT AND PHARMACEUTICAL DIRECTOR, ENROLMENT AGENTS AND PHARMACEUTICAL CHEMISTS." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11115-65-R: United Steelworkers of America (Applicant) v. Hunter Drums Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT)

11116-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO:CLC (APPLICANT)
v. National Grocers Company Limited (Respondent).

Unit: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT OFFICE MANAGERS, PERSONS ABOVE THE RANK OF OFFICE MANAGER, CONFIDENTIAL SECRETARY TO THE BRANCH MANAGER, SALES STAFF, BUYER, PERSONS EMPLOYED AT THE RESPONDENT'S CASH AND CARRY OPERATIONS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

(9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11119-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS! INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. BLONDIE CLEANERS (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, DRIVER SALESMEN, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 629 ).

11124-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).

Unit: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11125-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Shaw Pipe Protection Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HANNON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 643 ).

11128-65-R: Hotel & Restaurant Employees And Bartenders' International Union. Restaurant, Cafeteria & Tavern Employees Union. Local 254 (Applicant) v. Brant Norfolk Building & Construction Trades Hall (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF."

(2 EMPLOYEES IN THE UNIT).

11131-65-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 880 (Applicant) v. Wonder Bakeries Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD."

(27 EMPLOYEES IN THE UNIT).

THE BOARD FINDS THAT THE RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS! UNION, LOCAL 461, HAS ABANDONED ITS BARGAINING RIGHTS FOR EMPLOYEES IN THE BARGAINING UNIT AND THAT IT NO LONGER REPRESENTS ANY OF THE EMPLOYEES IN THE BARGAINING UNIT.

11134-65-R: CANADIAN GUARDS ASSOCIATION (APPLICANT) v. THE UNIVERSITY OF GUELPH (RESPONDENT).

UNIT: "ALL COLLEGE SECURITY OFFICERS EMPLOYED BY THE RESPONDENT AT GUELPH SAVE AND EXCEPT CHIEF COLLEGE SECURITY OFFICER." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11135-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CI..CLC. (APPLICANT) v. H. IMBLEAU & SON LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." ( 22 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES) ...

11136-65-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) v. BAY TRIM & ACCESSORIES LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(72 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11139-65-R: SHEET METAL WORKERS! INTERNATIONAL ASSOCIATION, A.F.L.-C.1.0., Local Union 269 (Applicant) v. M. Bradford Heating Limited (Respondent).

Unit: "ALL SHEET METAL WORKERS, SHEET METAL WORKERS! APPRENTICES AND HELPERS IN TRAINING INTHE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF FRONTENAC AND LENNOX AND ADDINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

ON DECEMBER 7, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"As an interim measure the Board has set the Counties of Frontenac and Lennox and Addington as an appropriate geographic area. In the circumstances of this case the Board sees no reason to depart therefrom."

ON DECEMBER 9, 1965 THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"AS IS STATED IN PARAGRAPH 3 OF THE BOARD'S DECISION IN THIS MATTER, DATED DECEMBER 7TH, 1965, THE RESPONDENT, AS AT THAT DATE, HAD FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. AS IS THE BOARD'S USUAL PRACTICE IN SUCH CASES THE BOARD DEALT WITH THE APPLICATION ON THE BASIS OF THE MATERIALS THEN BEFORE IT AND ARRIVED AT ITS DECISION ON DECEMBER 7TH, 1965 IN WHICH THE APPLICANT WAS CERTIFIED AS THE BARGAINING AGENT FOR SHEET METAL WORKERS, SHEET METAL WORKERS' APPRENTICES AND HELPERS IN TRAINING IN THE EMPLOY OF THE RESPONDENT IN THE AREA DESIGNATED IN PARAGRAPH 6 OF THE SAID DECISION.

ON DECEMBER 8TH, 1965 THE BOARD RECEIVED AN UNSIGNED REPLY FROM THE RESPONDENT. IT IS NOT ENTIRELY CLEAR FROM THE POST MARKS ON THE ENVELOPE WHEN THE REPLY WAS MAILED. THERE WAS ALSO RECEIVED ON DECEMBER 8TH, TWO STATEMENTS OF DESIRE SIGNED BY PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. IT WOULD APPEAR THAT THESE STATEMENTS WERE MAILED REGISTERED ON DECEMBER 6TH, 1965, IN WHICH CASE THE SAID STATEMENTS MUST BE DEEMED TO HAVE BEEN FILED WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF

PROCEDURE. FURTHER, WHEN THE REGISTRATION NUMBERS OF THE ENVELOPE CONTAINING THE REPLY AND THE ENVELOPE CONTAINING THE STATEMENTS OF DESIRE ARE COMPARED IT WOULD ALSO APPEAR TO BE THE CASE THAT THE REPLY WAS REGISTERED ON DECEMBER 6TH AND IS ACCORDINGLY ALSO A TIMELY REPLY. IN THESE CIRCUMSTANCES WE PROPOSE TO REVIEW OUR DECISION OF DECEMBER 7TH IN THE LIGHT OF THE DOCUMENTS RECEIVED ON DECEMBER 8TH.

DEALING, FIRSTLY, WITH THE STATEMENTS OF DESIRE FILED BY THE EMPLOYEES, ONE STATEMENT AFFIRMS THE DESIRE OF THE PERSONS SIGNING THE STATEMENT THAT THEY WISH THE APPLICANT TO REPRESENT THEM. THIS STATEMENT IS SIGNED BY FOUR OF THE FIVE PERSONS ALLEGED BY THE RESPONDENT TO BE IN THE BARGAINING UNIT. THE SECOND STATEMENT WHICH IS IN OPPOSITION TO THE APPLICATION IS SIGNED BY ONE EMPLOYEE. EVEN IF FULL WEIGHT WERE TO BE ACCORDED TO THIS LAST MENTIONED STATEMENT, THE APPLICANT WOULD STILL HAVE AS MEMBERS SIXTY PER CENT OF THE PERSONS FALLING INTO THE BARGAINING UNIT. IN OTHER WORDS THERE IS NO NEED TO PUT THIS MATTER ON FOR HEARING IN ORDER TO DEAL WITH THE STATEMENT IN OPPOSITION SIGNED BY ONE PERSON.

IN SO FAR AS THE REPLY IS CONCERNED, THE ONLY PROBLEM CONTAINED THEREIN IS THE REQUEST BY THE RESPONDENT THAT THE BOARD HOLD A HEARING. IN SUPPORT OF SUCH REQUEST, THE RESPONDENT STATES AS FOLLOWS:

"THE MAJOR PART OF OUR WORK IS APPROXIMATELY 90% INSTALLATIONS OF FURNACES, DUCT WORK ETC. WHICH IS HIGHLY COMPETETIVE.

THERE IS NO OTHER SHOP IN THE CITY OF KINGSTON DOING FURNACE INSTALLATIONS AS THEIR MAIN VOCATION; ARE MEMBERS OF ANY UNION

WE FEEL IF A UNION WAS INTRODUCED IT WOULD IMMEDIATELY PUT US IN A VERY SERIOUS POSITION COMPETITIVELY, AND FORCE US TO DISCONTINUE OUR BUSINESS, WHICH WOULD RESULT IN THE LAY OFF OF OUR FIVE EMPLOYEES."

Section 75 (9a) of The Labour Relations Act provides that in certification cases in the Construction Industry "the Board need not hold a hearing on such an application". The reasons put forward by the respondent in support of its request for a hearing are the same as or similiar to reasons advanced in other cases in which the Board has refused such requests. See for example Irio Carpenters (Contractors) 0.L.R.B. Monthly Report, December, 1962, p. 333.

THE MATTERS REFERRRED TO BY THE RESPONDENT ARE NOT MATTERS WHICH IN OUR OPINION THE BOARD IS ENTITLED TO CONSIDER IN DETERMINING, UNDER THE LABOUR RELATIONS ACT, WHETHER THE

APPLICANT TRADE UNION IS ENTITLED TO CERTIFICATION; RATHER, THESE ARE MATTERS FOR COLLECTIVE BARGAINING BETWEEN THE APPLICANT AND THE RESPONDENT IF AND WHEN A CERTIFICATE ISSUES. IN ALL THESE CIRCUMSTANCES, THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING IN THIS CASE.

IT WOULD APPEAR FROM THE REPLY THAT THE CORRECT NAME OF THE RESPONDENT IS "G. M. BRADFORD HEATING LIMITED" AND NOT "BRADFORD HEATING LTD." AS SET OUT IN THE APPLICATION. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "G. M. BRADFORD HEATING LIMITED".

IN ALL THE CIRCUMSTANCES SET OUT ABOVE AND SUBJECT TO THE LAST PRECEDING PARAGRAPH, THE BOARD'S DECISION OF DECEMBER 7TH, 1965 IS HEREBY CONFIRMED.

11140-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. P. R. Connolly Construction Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS FROM THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(5 EMPLOYEES IN THE UNIT).

11142-65-R: Building Service Employees' International Union, Local 268 AFL-C10., CLC. (Applicant) v. St. Joseph's General Hospital (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELLIOTT LAKE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OPERATING ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT."

(76 EMPLOYEES IN THE "UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11144-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. CARLETON PLACE HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT CARLETON PLACE." (3 EMPLOYEES IN THE UNIT).

11145-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Dafew Stampings Limited (Respondent)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SCARBOROUGH SAVE AND EXCEPT FOREMEN, PERSON ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR

NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE RESPONDENT AND THE APPLICANT).

11146-65-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) v. LONG SAULT FABRICS LIMITED (RESPONDENT) v. TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (INTERVENER).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MILL AT LONG SAULT, SAVE AND EXCEPT SHIFT FOREMEN AND SHIFT FORELADIES, PERSONS ABOVE THE RANK OF SHIFT FOREMAN AND SHIFT FORELADY, OFFICE AND SALES STAFF, NURSES AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (183 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE INTERVENER AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

THE APPLICATION OF THE INTERVENER ACCORDINGLY IS DIS-

THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

11148-65-R: United Steelworkers of America (Applicant) v. Wilson-Hinschberger Ltd. (Respondent).

 $\underline{\text{UNIT}}$ : "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN  $2^4$  HOURS PER WEEK." (44 EMPLOYEES IN THE UNIT).

11149-65-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL CIO CLC (APPLICANT) v. THE COLLINGWOOD GENERAL AND MARINE HOSPITAL (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (88 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11150-65-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL CIO CLC (APPLICANT) v. THE COLLINGWOOD GENERAL AND MARINE HOSPITAL (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT ITS HOSPITAL AT COLLINGWOOD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11151-65-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) v. LIFE SAVERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STATIONARY ENGINEERS COVERED BY CERTIFICATE OF THE BOARD DATED 23RD DAY OF AUGUST, 1965." (94 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11153-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 183 (Applicant) v. Drope Paving & Construction Ltd. (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIV MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YOUGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, SHOP AND YARD EMPLOYEES AND SECURITY GUARDS." (5 EMPLOYEES IN THE UNIT).

11155-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. PEETERS STEEL ERECTION (RESPONDENT).

Unit: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND WOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN," (3 EMPLOYEES IN THE UNIT).

17157-65-R: BRICKLAYERS & TILESETTERS LOCAL UNION #2 UNTARIO AFFILIATED WITH THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT) v. TORONTO BOARD OF EDUCATION CARETAKERS! UNION, LOCAL # 134, CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL JOURNEYMEN BRICKLAYERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11161-65-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. NICK'S HAULAGE LIMITED (RESPONDENT). (7 EMPLOYEES IN THE

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT)

11164-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (APPLICANT) v. DUFFERIN MATERIALS & CONSTRUCTION LIMITED (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTYFIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET,
AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD,
RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS
OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE
WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH,
WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK
OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, THOSE
EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN
TORONTO ROAD BUILDERS\* ASSOCIATION AND A COUNCIL OF TRADE UNIONS MADE ON THE 8TH
DAY OF JUNE, 1964 AND SHOP AND YARD EMPLOYEES." (11 EMPLOYEES IN THE UNIT).

(AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES).

11171-65-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. WILBURCOLT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (27 EMPLOYEES IN THE UNIT).

11172-65-R: United Brotherhood of Carpenters' and Joiners' of America (Applicant) v. Universal Construction Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ELGIN, MIDDLESEX, OXFORD, PERTH, HURON AND BRUCE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

11173-65-R: International Hod Carriers' Building & Common Labourers Union of America, Local 1059 (Applicant) v. Universal Construction Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ELGIN, MIDDLESEX, OXFORD, PERTH, HURON AND BRUCE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

11174-65-R: HOTEL & RESTAURENT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION,
RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. VERSAFOOD
SERVICES LIMITED (RESPONDENT)

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT THE SCARBOROUGH PLANT OF THE CANADIAN GENERAL ELECTRIC COMPANY LIMITED, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

11176-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA. LOCAL 506 (APPLICANT) v. DAREN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

11177-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. KINGSWAY LUMBER CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (144 EMPLOYEES IN THE UNIT).

11184-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Northern Flooring Co. (Quebec) Ltd. (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

11186-65-R: Brotherhood of Painters, Decorators, Paperhangers of America, Local Union 1891 (Applicant) v. Jeckob Sigulim, Painting Contractor (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

11195-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1098 (APPLICANT) v. RAYMOND INTERNATIONAL INCORPORATED (RAYMOND CONCRETE PILE DIVISION) (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11200-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Gerard Builders of North Bay Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF MERRITT IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

The job site affected by this application falls outside Board area # 17. Although the Board intends to review the boundaries of this particular area this will necessitate a hearing in Sudbury. In the circumstances of this case, the Board is not prepared to undertake the task of revision at this time.

## CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

10817-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS (APPLICANT) V. ESSEX WIRE CORPORATION LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141, AFFILIATED WITH THE 1.B. OF T.C.W. & H. OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PLANT NURSES." (416 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST			370
NUMBER OF BALLOTS CAST		368	,, ,
NUMBER OF SPOILED BALLOTS	8		
NUMBER OF BALLOTS SEGREGATED			
(NOT COUNTED)	1		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	282		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERVENER	77		

11003-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Duplate Canada Limited (Respondent v. International Union of Operating Engineers Local 796 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, CHIEF ENGINEER, PERSONS ABOVE THE RANKS OF FOREMAN AND CHIEF ENGINEER, OFFICE AND SALES STAFF, PLANT GUARDS AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 222 AND THE RESPONDENT." (9 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CHEMISTS, ENGINEERS AND ENGINEERING TECHNICIANS, PHYSICISTS, CANTEEN ATTENDANTS, MATRONS, DRAUGHTSMEN, PRODUCTION AND DEVELOPMENT TECHNICIANS, LABORATORY PERSONNEL, WORK STANDARDS AND METHODS MEN, QUALITY CONTROL ENGINEERS AND TECHNICIANS AND EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES ON VOTERS! LIST			9
NUMBER OF BALLOTS CAST		9	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	8		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERVENER	1		

11043-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. The A. P. Parts Corporation (Canada) Limited (Respondent) v. District 50 United Mine Workers of America Local Union No. 10536 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."

(95 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST			86
NUMBER OF BALLOTS CAST		87	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS SEGREGATED AND			
(NOT COUNTED)	1		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	68		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERVENER	17		

11047-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. PRIMEAU ARGO BLOCK COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN COOKSVILLE."

(3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS! LIST	3
NUMBER OF BALLOTS CAST	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

11048-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. THE SALVATION ARMY GRACE HOSPITAL (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

<u>Unit</u>: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER HOUSE OF THE RESPONDENT AT ITS HOSPITAL AT TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

Number of names on revised voters' list 5
Number of ballots cast 5
Number of ballots marked in favour of applicant 5

Number of Ballots Marked in Favour of International Union of Operating Engineers Local 796

(

11094-65-R: International Molders & Allied Workers Union AFL.CIO.CLC (Applicant)
v. Guildline Instruments Ltd. (Respondent) v. Guildline Employees Union (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SMITH FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST			45
NUMBER OF BALLOTS CAST		45	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	24		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERVENER	21		

## CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10813-65-R: Warehousemen and Miscellaneous Drivers, Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Canadian Linen Supply (Ontario) Ltd. (Respondent).

UNIT: "ALL ROUTE SALESMEN EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN AND SERVICE PERSONNEL." (41 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST	39	
Number of Ballots Cast	39	
NUMBER OF BALLOTS SEGREGATED AND		
(NOT COUNTED)	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	16	

10918-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. CANTERBURY FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS VENDING DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

Number of Names on Voters' LIST 4

Number of Ballots Cast 4

Number of Ballots Marked in Favour

of Applicant 3

Number of Ballots Marked Against

Applicant

11075-65-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Dashwood Planing Mills Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS DASHWOOD PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS LIST 32

NUMBER OF BALLOTS CAST 32

NUMBER OF BALLOTS MARKED IN FAVOUR

OF APPLICANT 21

NUMBER OF BALLOTS MARKED AGAINST

APPLICANT 11

## APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

## No Vote Conducted

10789-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC. (APPLICANT) v. BEACH INDUSTRIES LIMITED (RESPONDENT). (52 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 633 ).

10911-65-R: Warehousemen and Miscellaneous Drivers, Local Union 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Industrial & Domestic Protection (Armoured Car) LTD. (Respondent) v. Industrial & Domestic Protection Company Limited (Party Respondent).

(SEE INDEXED ENDORSEMENT PAGE 636 ).

11052-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA LOCAL 1250 (AFL-CIO) (CLC) (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIF), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(31 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 641 ).

11062-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 1250 (AFL-CIO) (CLC) (Applicant) v. Deckert - Dancy and Associates Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN."
(7 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The applicant, Local Union 1250 of the International Hod Carriers' Building and Common Labourers' Union of America, in its Form 60, Declaration Concerning Membership Documents, Construction Industry, asserts that there were seven persons in the Bargain-ing unit. In support of its application the applicant filed, inter alia, four certificates of membership indicating membership in Local 506 of the International Hod Carriers' Building and Common Labourers' Union of America and one certificate of membership indicating membership in Local Union 183 of the International Hod Carriers' Building and Common Labourers' Union of America. These five certificates of membership authorize the applicant, Local Union 1250 of the International Hod Carriers' Building and Common Labourers' Union of America to Bargain on Behalf of the said Employees. For the reasons given in the G. J. Gaffney Limited case, Board file number 11052-65-R, the Board is unable to accord any weight to this evidence.

THE BOARD FURTHER FINDS THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY—FIVE PER CENT OF THE EMPLOY-EES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

11079-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. KILMER VAN NOSTRAND Co. LIMITED (RESPONDENT). (30 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ALTHOUGH THE APPLICANT HAS REQUESTED LEAVE TO WITHDRAW ITS APPLICATION HEREIN, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSED THE APPLICATION."

11121-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT)

v. Perchuk Lumber (Respondent). (3 employees).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 AND BETWEEN THE RESPONDENT AND LUMBER & SAWMILL WORKERS UNION LOCAL 2693, THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA HAVE BEEN FILED WITH THE BOARD.

IN THESE CIRCUMSTANCES THERE IS NO NEED TO PROCESS THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

 $\frac{11165-65-R}{\text{Union }\#249}$ : United Brotherhood of Carpenters and Joiners of America, Local Union #249 (Applicant) v. Edward Kehoe (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF FRONTENAC AND LENNOX AND ÂDDINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS :-

"THE BOARD FURTHER FINDS THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS ACCORDINGLY DISMISSED."

11183-65-R: NURSES\* ASSOCIATION ONTARIO COUNTY HEALTH UNIT (APPLICANT) V. ONTARIO COUNTY HEALTH UNIT (SOUTHERN AREA) (RESPONDENT). (13 EMPLOYEES).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT THE RESPONDENT IS A MUNICIPALITY AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT AND THAT IT HAS DECLARED UNDER SECTION 89 OF THE LABOUR RELATIONS ACT THAT THE LABOUR RELATIONS ACT SHALL NOT APPLY TO IT IN ITS RELATIONS WITH ITS EMPLOYEES OR ANY OF THEM. IN VIEW OF THE ACTION OF THE RESPONDENT IN MAKING SUCH A DECLARATION, THE BOARD HAS NO JURISDICTION TO PROCESS THIS APPLICATION FURTHER AND THE PROCEEDING IS ACCORDINGLY TERMINATED."

11187-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 3233, Affiliated with the Carpenters' District Council of Toronto and Vicinity (Applicant) v. Whitney Construction (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"For the reasons given in the O. J. Gaffney Limited case, Board file number 11061-65-R, the Board is satisfied on the basis of all the evidence before it that less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant at the material times fixed in accordance with The Labour Relations act and the Board's Rules of Procedure.

THE APPLICATION IS ACCORDINGLY DISMISSED."

### CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10243-65-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. ZEHR'S MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS STORES AT GUELPH, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON VOTERS! LIST		11
NUMBER OF BALLOTS CAST	11	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	9	

(SEE INDEXED ENDORSEMENT PAGE 631 ).

10839-65-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 540 (APPLICANT) v. RANCO CONTAINER PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BURLINGTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON VOTERS! LIST		15
NUMBER OF BALLOTS CAST	15	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

10996-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Roy Lefneski Construction (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIST		7
NUMBER OF BALLOTS CAST	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	4	

### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

- 10614-65-R: Wood Wire & Metal Lathers Union, Local 97 (Applicant) v. Baron Drywall Ltd. (Respondent). (12 employees).
- 10960-65-R: International Printing Pressmen's and Assistants' Union of North America (Applicant) v. Merton W. Lake, carrying on business under the style and firm name of "The Porcupine Advance" (Respondent). (6 employees).
- 11087-65-R: International Hod Carriers' Building and Common Labourers' Union of America Local Union No. 837 (Applicant) v. A. E. Anderson Limited (Respondent). (167 employees).
- 11099-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. IROQUOIS FALLS PUBLIC SCHOOL BOARD (RESPONDENT). (1 EMPLOYEE).
- 11120-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 27, AFFILIATED WITH THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) v. Rosco Erectors (Respondent) (9 employees).
- 11132-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Allcrete Froming Ltd. (Respondent).
- 11154-65-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) v. HOWELL FORWARDING CO. LIMITED (WILBERCOLT) (RESPONDENT).
- 11160-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Ambassador Sales of Ottawa Co. Ltd. (Respondent).
- 11192-65-R: International Chemical Workers Union (Applicant) v. Union Gas Company of Canada Limited (Respondent). (28 employees).
- 11193-65-R: Local Union #1940 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dominion Sound Equipment Limited (Respondent). (3 Employees).
- 11203-65-R: Local Union #1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. Canadian John Mansville (Respondent).

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

#### DURING DECEMBER

- 10939-65-R: LABORATORY WORKERS OF INTERCHEM CANADA LIMITED AULCRAFT FINISHES DIVISION (Applicants) v. International Chemical Workers Union, Local No. 424 (RESPONDENT). (6 EMPLOYEES). (GRANTED).
- (RE: INTERCHEM CANADA LIMITED,
  AULCRAFT FINISHES DIVISION,
  TORONTO, ONTARIO).

Number of names on revised voters' list Number of ballots cast Number of spoiled ballots

1

6

Number of ballots marked in favour

of respondent

Number of ballots marked against

respondent

10945-65-R: Mary T. Duffy (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America-U.A.W., Local 525 (Respondent). (7 employees). (GRANTED).

(Re: International Harvester Company of Canada Limited, Hamilton Truck Branch, Hamilton, Ontario).

Number of names on voters\* List 7

Number of Ballots Cast 7

Number of Ballots Marked in Favour

of Respondent 2

Number of Ballots Marked against

RESPONDENT 5

11046-65-R: Claude Abrams Industries Limited, carrying on business under the trade name of "Public Optical" (Applicant) v. The International Jewellery Workers' Union (Respondent). (7 Employees). (GRANTED).

Number of names on revised voters' list

Number of ballots cast

Number of ballots marked in favour

of respondent

Number of ballots marked against

respondent

6

11088-65-R: JAMES M.D. WATT (APPLICANT) V. UNITED AUTO WORKERS LOCAL No. 641 (RESPONDENT). (35 EMPLOYEES). (DISMISSED).

(Re: Instruments (1951) Limited, Ottawa, Ontario).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON NOVEMBER 12TH, 1965, THE APPLICANT MADE APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

IT WOULD APPEAR THAT CONCILIATION SERVICES WERE GRANTED TO THE RESPONDENT AND THE EMPLOYER IN THIS MATTER ON NOVEMBER 10TH, 1965.

Subsection 2 of Section 46 of the Act provides, Inter Alia:

(2) Where notice has been given under section 40 and the Minister has appointed a conciliation officer or a mediator, no application for CERTIFICATION OF A BARGAINING AGENT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE COLLECTIVE AGREEMENT AND NO APPLICATION

FOR A DECLARATION THAT THE TRADE UNION THAT WAS A PARTY TO THE COLLECTIVE AGREEMENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE AGREEMENT SHALL BE MADE AFTER THE DATE WHEN THE AGREEMENT CEASED TO OPERATE OR THE DATE WHEN THE MINISTER APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, WHICHEVER IS LATER, UNLESS, FOLLOWING THE APPOINTMENT OF A CONCILIATION OFFICER OR A MEDIATOR, IF NO COLLECTIVE AGREEMENT HAS BEEN MADE,

(A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR;

IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE, IT WOULD FOLLOW THAT THIS APPLICATION IS UNTIMELY BY VIRTUE OF SECTION 46(2)(A) IN THAT THE APPLICATION WAS MADE NEITHER BEFORE THE DATE WHEN THE MINISTER APPOINTED A CONCILIATION OFFICER NOR AFTER THE EXPIRY OF TWELVE MONTHS FROM THE DATE OF THE APPOINTMENT OF A CONCILIATION OFFICER.

THE BOARD ACCORDINGLY DIRECTS THE APPLICANT TO ADVISE THE BOARD IN WRITING ON OR BEFORE NOVEMBER 29TH, 1965, WHETHER, IN HIS OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANT IS OF THE OPINION THAT THE BOARD IS IN ERROR, HE WILL INCLUDE IN HIS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF HIS OPINION.

THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.

IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS, AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT."

On December 1, 1965 the Board further endorsed the Record as follows:-

"THE BOARD HAS NOT RECEIVED ANY REPRESENTATIONS FROM
THE APPLICANT IN RESPONSE TO THE BOARD'S DIRECTIONS MADE
IN ITS DECISION OF NOVEMBER 19TH, 1965.

THE BOARD NOW FINDS THAT CONCILIATION SERVICES WERE GRANTED TO THE RESPONDENT AND INSTRUMENTS (1951) LIMITED ON NOVEMBER 10TH, 1965.

Since this application does not come within the terms of section 46 (2) (a) of The Labour Relations Act, the Board finds that this application is untimely.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

11122-65-R: THE OFFICE EMPLOYEES OF THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED, FORT FRANCES, ONTARIO, AS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD, SEPTEMBER 20, 1963 (APPLICANT) v. LOCAL No. 405, OFFICE EMPLOYEES INTERNATIONAL UNION AFL-CIO (RESPONDENT). (37 EMPLOYEES) (GRANTED).

(Re: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED, FORT FRANCES, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS APPLIES FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

FOLLOWING THE HEARING IN THIS MATTER, THE BOARD RECEIVED A LETTER DATED DECEMBER 14TH, 1965, FROM THE OFFICE EMPLOYES INTERNATIONAL UNION, WHICH READS AS FOLLOWS:

"I am authorized to notify you that the charter of Local 405, Office Employees International Union AFL-CIO at Fort Frances Ontario was revoked on October 15th 1965 by the Executive Council of the Office Employees International Union."

HAVING REGARD TO THE FACT THAT THE CHARTER OF THE RESPONDENT HAS BEEN REVOKED BY THE OFFICE EMPLOYES INTERNATIONAL UNION, THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE ONTARIO-MINNIESOTA PULP AND PAPER COMPANY LIMITED AT FORT FRANCES, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT."

11123-65-R: HARRY MORGAN (APPLICANT) v. BUILDING SERVICE EMPLOYEES! INTERNATIONAL UNION LOCAL 204, A.F.L.-C.I.O.-C.L.C. (RESPONDENT). (1 EMPLOYEE). (GRANTED).

(RE: SIXTY FRONT STREET WEST LIMITED, TORONTO, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

THE RESPONDENT TRADE UNION, ALTHOUGH SERVED WITH NOTICE OF THIS APPLICATION, DID NOT REPLY TO THE APPLICATION NOR DID IT APPEAR AT THE HEARING. IT APPEARS FROM THE EVIDENCE THAT

THE APPLICANT IS THE ONLY EMPLOYEE IN THE BARGAINING UNIT.
THE APPLICANT TESTIFIED THAT HE NO LONGER WISHED TO BE
REPRESENTED BY THE RESPONDENT UNION.

IN VIEW OF ALL THE CIRCUMSTANCES OF THIS CASE, THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF SIXTY FRONT STREET WEST LIMITED AT TORONTO, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

11137-65-R: CHARLOTTE ELIZABETH ROGERS AND JULIA LOUISE WHITE ON THEIR OWN BEHALF AND ON BEHALF OF CERTAIN EMPLOYEES OF F. W. WOOLWORTH CO. LIMITED (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (RESPONDENT). (35 EMPLOYEES). (GRANTED).

(Re: F. W. Woolworth Co. Limited Retail Stores, Peterborough, Ontario).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANTS HAVING MADE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT, AND THE RESPONDENT HAVING ADVISED THE BOARD BY LETTER DATED DECEMBER 6TH, 1965, THAT "....WE NO LONGER CLAIM TO REPRESENT ANY EMPLOYEES THAT MAY BE AFFECTED BY THIS APPLICATION.", THE BOARD FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTS THE EMPLOYEES OF F. W. WOOLWORTH CO. LIMITED, IN THEUNIT HEREINAFTER SET FORTH, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT, NAMELY:

ALL EMPLOYEES OF F. W. WOOLWORTH CO. LIMITED IN
ITS RETAIL STORES AT PETERBOROUGH, SAVE AND
EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE
RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF,
PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD."

11202-65-R: THE EMPLOYEES ASSOCIATION OF PEPSI-COLA CANADA LTD. (OTTAWA BRANCH) (APPLICANT) v. LOCAL UNION NUMBER 365, OTTAWA, ONTARIO INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (RESPONDENT). (DISMISSED).

(RE: PEPSI-COLA CANADA LTD. (OTTAWA),
OTTAWA, ONTARIO).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This application for a declaration terminating the bargaining rights of the respondent was made by The Employees Association of Pepsi-Cola Canada Ltd. (Ottawa Branch) on December 10th, 1965.

THE RESPONDENT UNION WAS CERTIFIED ON FEBRUARY 8TH, 1965, FOR CERTAIN EMPLOYEES OF PEPSI-COLA CANADA LTD., AT OTTAWA.

THE APPLICANT FAILED TO INDICATE IN ITS APPLICATION (FORM 18) THE SECTION OF THE LABOUR RELATIONS ACT (EITHER SECTION 43, 44 OF 45) UNDER WHICH IT APPLIED. HOWEVER, THE APPLICANT FILED WITH ITS APPLICATION A DOCUMENT SIGNED BY PERSONS WHO ARE PURPORTED TO BE EMPLOYEES OF PEPSI-COLA CANADA LTD., WHICH READS IN PART AS FOLLOWS:

"We, THE EMPLOYEES OF PEPSI-COLA CANADA LTD. (OTTAWA), HEREBY ASK THE LABOUR RELATIONS BOARD THAT THE UNION DESCRIBED AS FOLLOWS: LOCAL UNION NUMBER 365, OTTAWA, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC, CEASE TO REPRESENT US IN OUR NEGOTIATIONS WITH THE AFOREMENTIONED COMPANY AND THAT THE ASSOCIATION DESCRIBED AS THE EMPLOYEES ASSOCIATION OF PEPSI-COLA CANADA LTD. (OTTAWA BRANCH), BE RECOGNIZED AS BEING THE ONLY BARGAINING AGENT WHICH HAS THE RIGHT TO NEGOTIATE A CONTRACT OF EMPLOYMENT WITH THE SAID COMPANY.

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE HAVE VOLUNTARILY SIGNED THIS PETITION WITHOUT THERE BEING ANY PRESSURE OR DURESS EXERCISED BY THE PERSON OR PERSONS WHO HAVE REQUESTED US TO SIGN THIS PETITION."

IN ADDITION, A LETTER DATED DECEMBER 9TH, 1965, WHICH ACCOMPANIED THE APPLICATION READS IN PART AS FOLLOWS:

"This petition is filed pursuant to Section 46(2) (B) of The Labour Relations Act of Ontario as more than 30 days have elapsed since the Report of the Conciliation Board has been released to the parties, and a strike has been held without success."

THIS APPLICATION AND THE MANNER IN WHICH IT IS MADE IS FRAUGHT WITH PROBLEMS. THE FIRST DIFFICULTY WITH WHICH THE BOARD IS FACED IS TO DETERMINE THE PROVISION OF THE LABOUR RELATIONS ACT UNDER WHICH THIS APPLICATION IS MADE. THE ONLY SECTION REFERRED TO IN THE MATERIAL FILED IS SECTION 46 OF THE ACT. THE BOARD HAS NEVER TREATED SECTION 46 AS BEING A REMEDIAL SECTION BUT AS A PROCEDURAL SECTION. NO SUBSTANTIVE RIGHT IS CREATED BY SECTION 46. THE SECTION DEALS WITH THE TIMELINESS OF APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS. HOWEVER, EVEN IF THE BOARD WERE TO TREAT SECTION 46 AS REMEDIAL THE APPLICATION MUST FAIL.

The letter accompanying the application refers specifically to section 46 (2) (B). However, section 46 (2) must be read as a whole. Section 46 (2) is only applicable where notice has been served under section 40 of the Act, (I.E.) where a party has served notice to bargain for the renewal of a collective agreement. It is readily apparent because of the time factors involved, that the respondent and Pepsi-Cola Canada Ltd., are not parties to a collective agreement under which a notice to bargain for renewal has been served pursuant to the provisions of section 40 of the Act. In addition, the timeliness of an application under section 46 (2) is dependent on the following factors as set out in the section:

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

#### WHICHEVER IS LATER.

(EMPHASIS ADDED)

Since at least 12 months have not elapsed since the date of the appointment of a conciliation officer as required by section 46 (2), this application is untimely pursuant to the provisions of that section.

IF HOWEVER THE BOARD WERE TO TREAT THIS APPLICATION AS HAVING BEEN MADE UNDER SECTION 43 OF THE ACT, THE APPLICATION WOULD AGAIN BE UNTIMELY SINCE EMPLOYEES CAN ONLY MAKE AN APPLICATION UNDER THIS SECTION WHERE THE "TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION" AND ONE YEAR HAS NOT AS YET ELAPSED.

ANOTHER COMPLICATING FACTOR OF THIS APPLICATION IS THE IDENTITY OF THE APPLICANT. IF THE APPLICANT IS A TRADE UNION (AS IT CLAIMS TO BE), THEN IT HAS NO STATUS TO MAKE, THE APPLICATION SINCE THE ACT DOES NOT CONTEMPLATE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS BEING MADE BY A PARTY WHO IS A STRANGER TO THE BARGAINING RELATIONSHIP. MOREOVER, IF THIS APPLICATION IS BROUGHT UNDER SECTION 43, AS IT APPEARS TO BE, IT CAN ONLY BE BROUGHT BY EMPLOYEES OF THE RESPONDENT. IF THE APPLICANT IS NOT A THADE UNION BUT SOME OTHER FORM OF ORGANIZATION WITH AN IDENTITY SEPARATE FROM THE EMPLOYEES, THE SAME IMPEDIMENT WOULD EXIST.

IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED."

## APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING DECEMBER

11110-65-R: Local 12-L, Lithographers and Photoengravers International Union, (Applicant) v. Photo Engravers and Electrotypers Limited (Respondent). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE BOARD FINDS THAT THE APPLICANT, BY REASON OF A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF COMMERCIAL ARTISTS AND PHOTOGRAPHERS ASSOCIATION, C.L.C., LOCAL 24515 WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN PHOTO ENGRAVERS AND ELECTROTYPERS LIMITED AND COMMERCIAL ARTISTS AND PHOTOGRAPHERS ASSOCIATION, C.L.C., LOCAL 24515 EFFECTIVE FROM MAY 1ST, 1965 TO APRIL 30TH, 1967 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

THE BOARD ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF COMMERCIAL ARTISTS AND PHOTOGRAPHERS ASSOCIATION, C.L.C., LOCAL 24515 WHICH WAS A PARTY TO THE COLLECTIVE AGREEMENT, REFERRED TO ABOVE.

## APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING DECEMBER

10990-65-U: E.G.M. CAPE AND COMPANY (1956) LTD. (APPLICANT) V. DONALD SMITH ET AL (RESPONDENTS). (DISMISSED).

11096-65-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. N. Barabash et al (Respondents). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 645 ).

11111-65-U: CYANAMID OF CANADA LIMITED (WELLAND PLANT) (APPLICANT) v. N. J. ALBECKER ET AL (RESPONDENTS). (WITHDRAWN).

11166-65-U: A. COOPER & SONS LIMITED (APPLICANT) V. CHARLES BAZINET ET AL (RESPONDENTS). (WITHDRAWN).

11367-65-U: PENTAGON CONSTRUCTION COMPANY LTD. (APPLICANT) V. RHEAL J. AMYOTTE ET AL (RESPONDENTS). (WITHDRAWN).

11168-65-U: FRED KORMAN INC. (APPLICANT) v. RALPH ALKERTON ET AL (RESPONDENTS).

11169-65-U: THE MOULTON COMPANY LIMITED (APPLICANT) V. ROBERT ARBUTHNOT ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING DECEMBER

10994-65-U: J. MACNAMARA, ET AL (APPLICANTS) v. E.G.M. CAPE COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Neither party having requested that this matter be brought on for hearing pursuant to the provisions of the Board's decision in this matter dated November 5th, 1965, this application is accordingly dismissed."

11138-65-U: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 46 (Applicant) v. The Hydro-Electric Power Commission of Ontario (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION AT THE HEARING IN THIS MATTER. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT MADE ITS REQUEST THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

1162-65-U: Frederick Zimmerman, James MacNeill, and Orla Christiansen (Applicants) v. The Hydro-Electric Power Commission of Ontario (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for a declaration that a Lockout is unlawful. The applicants being persons in the EMPLOY OF THE RESPONDENT ALLEGED THAT THEY WERE LOCKED OUT BY THE RESPONDENT CONTRARY TO SECTION 54 OF THE LABOUR RELATIONS ACT.

THE RESPONDENT RAISES THE PRELIMINARY OBJECTION THAT THE APPLICANTS ARE NOT EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND THUS HAVE NO STATUS TO MAKE THIS APPLICATION, AND THAT THE BOARD IS WITHOUT JURISDICTION TO HEAR IT.

THE BOARD HEARD THE EVIDENCE OF FREDERICK ZIMMERMAN, ONE OF THE APPLICANTS, AND IT WAS AGREED BY THE PARTIES THAT A DISPOSITION OF THE PRELIMINARY ISSUE WITH RESPECT TO MR. ZIMMERMAN WOULD APPLY AS WELL TO THE CASES OF THE OTHER APPLICANTS.

THE EVIDENCE ESTABLISHES THAT THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE UNITED

ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA.

ZIMMERMAN IS A MEMBER OF THE UNITED ASSOCIATION AND HIS TRADE IS THAT OF A PIPEFITTER. THE BARGAINING UNIT DEFINED IN THAT AGREEMENT IS AS FOLLOWS:-

# ARTICLE | RECOGNITION

- (1) THE EMPLOYER RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENT FOR ALL ITS JOURNEYMAN, HELPER, AND APPRENTICE PLUMBERS, PIPEFITTERS, STEAMFITTERS, AND PIPEWELDERS EMPLOYED BY THE CONSTRUCTION DIVISION OF THE EMPLOYER EXCEPT:
  - (1) PERSONS ABOVE THE RANK OF WORKING FOREMAN.
  - (II) EMPLOYEES WHOSE HEADQUARTERS AND USUAL PLACES OF WORK ARE HEAD OFFICE AND THE A. W. MANBY SERVICE CENTRE.
  - (III) CONSTRUCTION DIVISION EMPLOYEES WHO, AT APRIL 30, 1963, POSSESSED FULL REGULAR STATUS.

ZIMMERMAN, HOWEVER, IS NOT A MEMBER OF THE BARGAINING UNIT, BUT IS EXCLUDED THEREFROM AS A PERSON "ABOVE THE RANK OF WORKING FOREMAN". ZIMMERMAN'S TITLE IS "FOREMAN" AND. ALTHOUGH HE IS AN HOURLY-RATED EMPLOYEE HIS WAGE RATE IS NOT SET OUT IN THE COLLECTIVE AGREEMENT AND IS HIGHER THAN ANY OF THE RATES THERE SET OUT. HE IS IN CHARGE OF ABOUT FIFTEEN EMPLOYEES AND DEVOTES THE GREAT MAJORITY OF HIS TIME TO SUPERVISION AND TO CLERICAL DUTIES. HE DOES NOT CARRY THE TOOLS OF HIS TRADE, ALTHOUGH HE OCCASIONALLY PERFORMS CERTAIN BARGAINING UNIT WORK WHERE CIRCUMSTANCES REQUIRE IT. HE IS THE REPRESENTATIVE OF MANAGEMENT IN THE FIRST STEP OF THE GRIEVANCE PROCEDURE SET OUT IN THE COLLECTIVE AGREEMENT. (THE EVIDENCE HOWEVER, IS THAT ZIMMERMAN HAS BEEN INVOLVED IN VERY FEW GRIEVANCES AND THAT THESE HAVE BEEN EFFECTIVELY DEALT WITH AT A HIGHER LEVEL OF MANAGEMENT). Mr. ZIMMERMAN IS AUTHORIZED TO REPREMAND EMPLOYEES AND HE IS CALLED UPON TO ASSESS THEIR CAPABILITIES AND PERFORMANCES FROM TIME TO TIME, BUT IS NOT AUTHORIZED TO HIRE OR DISCHARGE EMPLOYEES.

SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT PROVIDES:-

WHO, IN THE OPINION OF THE BOARD, EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

IN THE CIRCUMSTANCES OF THE INSTANT CASE AND HAVING REGARD PARTICULARLY TO THE FACTS THAT ZIMMERMAN IS EXCLUDED FROM THE

BARGAINING UNIT BY VIRTUE OF HIS RANK, THAT THE GREAT MAJORITY OF HIS TIME IS SPENT ON SUPERVISORY DUTIES OR MATTERS RELATING THERETO AND THAT HE IS THE PERSONS DESIGNATED AS THE REPRESENTATIVE OF MANAGEMENT IN THE FIRST STEP OF THE GRIEVANCE PROCEDURE, THE BOARD IS OF OPINION THAT FREDERICK ZIMMERMAN EXERCISES MANAGERIAL FUNCTIONS. HE IS NOT, THEREFORE, AN "EMPLOYEE" FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

THE BOARD ACCORDINGLY HAS NO JURISDICTION TO DEAL WITH THIS APPLICATION AND THESE PROCEEDINGS ARE HEREBY TERMINATED."

## APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

10901-65-U: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C. 1.0.-C.L.C. (Applicant) v. Eastwood Park Hotel and Robert Laurent (Respondents). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"ON THE BASIS OF THE EVIDENCE AND THE REPRESENTATIONS OF COUNSEL WE ARE OF THE OPINION THAT ARGUABLE QUESTIONS OF LAW ARISE IN THIS MATTER.

THE BOARD ACCORDINGLY CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT EASTWOOD PARK HOTEL LIMITED FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- 1. That some time after August 28th, 1965
  THE RESPONDENT CLOSED THE "BEER OUTLET"
  IN THE LADIES BEVERAGE ROOM LOCATED ON
  THE MAIN FLOOR OF THE RESPONDENT HOTEL
  WITH THE RESULT THAT IT WAS NECESSARY FOR
  THE WAITERS WHO SERVICED THE LADIES BEVERAGE
  ROOM TO SECURE THE BEVERAGES FROM THE "BEER
  OUTLET" IN THE MEN'S BEVERAGE ROOM WHICH IS
  LOCATED DOWN A FLIGHT OF STAIRS IN THE
  BASEMENT OF THE HOTEL, IN CONTRAVENTION OF
  SECTION 59(1) OF THE LABOUR RELATIONS ACT.
  - 2. That the said respondent on or about September 15th, 1965 transferred an employee Peter Leonardaou from working on a full time basis (with the exception of one hour daily) in the cocktail lounge of the respondent hotel to work on a full time basis in the men's beverage room of the respondent hotel, in contravention of section 59(1) of the Labour Relations Act.
    - That the said respondent on or about September 15th, 1965 transferred an

employee Theodor Demopolous from working on a full time basis in the men's beverage room of the respondent hotel to working on a full time basis in the cocktail lounge of the respondent hotel, in contravention of section 59(1) of The Labour Relations Act.

4. That the said respondent on or about September 15th, 1965 required an employee Theodor Bibis to work in the three beverage rooms of the respondent hotel whereas prior to that time (although he worked part time in the cocktail lounge) he primarily worked in the "small" men's beverage room, in contravention of section 59(1) of The Labour Relations Act.

While there is some evidence which indicates that Theodor Bibis\* hours of work were reduced following certification and the giving of notice, the applicant has not alleged that any such reduction in his hours of work constitutes a violation of section 59(1). Accordingly, the Board is not called upon to make any finding relating to this evidence.

THERE IS NO EVIDENCE BEFORE US RELATING TO THE CONDUCT OF THE RESPONDENT ROBERT LAURENT UPON WHICH THE BOARD IS PREPARED TO CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST HIM. THE APPLICATION AS IT RELATES TO THE RESPONDENT ROBERT LAURENT ACCORDINGLY IS DISMISSED.

THE APPROPRIATE DOCUMENTS WILL ISSUE FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED BY THE RESPONDENT EASTWOOD PARK HOTEL LIMITED AS OUTLINED IN PARAGRAPH 2.

BOARD MEMBER F. W. MURRAY DISSENTED AND SAID:-

"FROM THE EVIDENCE | HAVE CONCLUDED THAT THE EMPLOYER INSTITUTED THIS CHANGE IN WORK ASSIGNMENT IN THE SAME MANNER AS HE HAD IN THE PAST INSTITUTED CHANGES IN WORK ASSIGNMENTS, NAMELY, BY A UNILATERAL DECISION BY HIM. WHILE CHANGES IN WORK ASSIGNMENTS HAD NOT BEEN VERY FREQUENT IN THE PAST SUCH AS TO CONCLUDE THAT THERE WAS ANY PATTERN, THERE IS ON THE OTHER HAND NO EVIDENCE THAT WORK ASSIGNMENTS HAD BEEN MADE IN THE PAST BASED ON LENGTH OF SERVICE OR ANY OTHER SUCH CRITERIA.

I have concluded from the evidence before the Board that one of the terms and conditions of employment of the personnel involved was to serve beverages in the locations assigned from time to time by their employer, and that therefore these changes in work assignments does not constitute a violation of Section 59(1) of the Labour Relations act, and that no prima facie case has been made by the applicant for consent to institute prosecution.

<sup>|</sup> WOULD DENY THIS APPLICATION."

10991-65-U: E.G.M. CAPE AND COMPANY (1965) LTD. (APPLICANT) V. DONALD SMITH ET AL (RESPONDENTS). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The parties agreed to the adjournment of this application sine die and further agreed that if either party fails to request that this matter be brought on for hearing within 30 days of November 4th, 1965, that this application be dismissed. Since no request has been received from either party for a hearing in this matter this application is accordingly dismissed."

10995-65-U: J. MACNAMARA ET AL (APPLICANTS) V. E. G. M. CAPE COMPANY LIMITED (RESPONDENT). (DISMISSED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The parties agreed to the adjournment of this application sine die and further agreed that if either party fails to request that this matter be brought on for hearing within 30 days of November 5th, 1965, that this application be dismissed. Since no request has been received from either party for a hearing in this matter this application is accordingly dismissed."

 $\frac{11009-65-U}{(Respondent)}$ . Western Freight Lines Limited (Applicant) v. Andrew (Andy) Poland

(SEE INDEXED ENDORSEMENT PAGE 648 ).

11010-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. JOSEPH BARNIER, ET AL (RESPONDENTS). (GRANTED).

- AND -

11012-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. JOSEPH BARNIER ET AL (RESPONDENTS). GRANTED).

- AND -

11013-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. HUGH McCORMICK (RESPONDENT). (GRANTED).

- AND -

11014-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. JOHN TIMMERMANS (RESPONDENT). (GRANTED).

- AND -

11015-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. OSCAR BECHARD (RESPONDENT). (GRANTED).

#### - AND -

11016-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. CECIL SITZES (RESPONDENT). (GRANTED).

#### - AND -

11017-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. BERNARD JOHNSON (RESPONDENT). (GRANTED).

#### - AND -

11018-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. LAWRENCE PELTIES (RESPONDENT). (GRANTED).

#### - AND -

11019-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. CARMEN FAUBERT (RESPONDENT). (GRANTED).

#### - AND -

11020-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. WILLIAM WILD (RESPONDENT). (GRANTED).

#### - AND -

11021-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. KENNETH HALL (RESPONDENT). (GRANTED).

#### - AND -

 $\frac{11022-65-U}{(RESPONDENT)}$ . WESTERN FREIGHT LINES LIMITED (APPLICANT) v. CLIFFORD DREW (RESPONDENT).

#### - AND -

11023-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. FRED NOLAN (RESPONDENT). (GRANTED).

### - AND -

11024-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. LLOYL BURCHIEL (RESPONDENT). (GRANTED).

#### - AND -

11025-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. DONALD BIRKBY (RESPONDENT). (GRANTED).

#### - AND -

11026-65-U: Western Freight Lines Limited (Applicant) v. Peter McKeon (Respondent). (GRANTED).

#### - AND -

11028-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. JOSEPH BUSHEY (RESPONDENT). (GRANTED).

- AND -

11030-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. GERHARDUS SMEENK (RESPONDENT). (GRANTED).

- AND -

11031-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. GARY VAUGHAN (RESPONDENT). (GRANTED).

- AND -

11041-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. ROBERT ROSE (RESPONDENT). (GRANTED).

THE BOARD CONSENTED TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS IN EACH OF THE ABOVE CASES (FILE Nos. 11010-65-U, 11012-65-U TO 11026-65-U, 11030-65-U, 11031-65-U AND 11041-65-U) FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT BEING AN EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT AND WHILE THE COLLECTIVE AGREEMENT WAS IN OPERATION HE DID ENGAGE IN A STRIKE ON OR ABOUT THE 29TH DAY OF OCTOBER, 1965.

11011-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. GLEN MARCH (RESPONDENT). (DISMISSED).

- AND -

11027-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. ORVILLE LECLAIR (RESPONDENT). (DISMISSED).

- AND -

11029-65-U: Western Freight Lines Limited (Applicant) v. Lyle Dodman (Respondent). (DISMISSED).

- AND -

11034-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) v. PASQUALE MASTROMARIANO (RESPONDENT). (DISMISSED).

11036-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. RALPH HORTON (RESPONDENT). (DISMISSED).

- AND -

11040-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. MAURICE DECAN (RESPONDENT). (DISMISSED).

THE BOARD'S DECISION IN EACH OF THE ABOVE 6 CASES READ AS FOLLOWS:-

"This is an application for consent to the institution of a prosecution against the respondent for an offence alleged to have been committed in violation of section 54 of The Labour Relations Act.

IN THE OPINION OF THE BOARD, THE EVIDENCE DOES NOT SUPPORT THE ALLEGATION OF THE APPLICANT THAT THE RESPONDENT, BEING AN EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT AND WHILE THE COLLECTIVE AGREEMENT WAS IN OPERATION, DID ENGAGED IN A STRIKE ON OR ABOUT THE 29TH DAY OF OCTOBER 1965.

THE APPLICANT HAVING FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATION, THE APPLICATION IS DISMISSED."

11112-65-U: CYANAMID OF CANADA LIMITED (WELLAND PLANT) (APPLICANT) v. N.J. ALBECKER, ET AL (RESPONDENTS). (WITHDRAWN).

11163-65-U: Cyanamid of Canada Limited (Welland Plant) (Applicant) v. N.J. Albecker et al (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING DECEMBER

10535-65-U: The Canadian Union of Operating Engineers Local 101 (Complainant) v. Canadian General Electric Company Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 649 ).

10818-65-U: Local Union 636 of the International Brotherhood of Electrical Workers A.F. of L. -C.1.0.-C.L.C. (Complainant) v. T. R. Services Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for relief pursuant to section 65 of The Labour Relations Act. The aggrieved person, Gerrard Hennessey, alleges that he was discharged by the respondent contrary to the provisions of The Labour Relations Act and, in part, that he was discharged for union activity contrary to section 50 of the Act. In an endorsement of the record in this matter, dated December 10, 1965, the Board set out its conclusion that the aggrieved was discharged

CONTRARY TO THE LABOUR RELATIONS ACT. THE BCARD NOW SETS FORTH ITS REASONS FOR THAT CONCLUSION.

THE AGGRIEVED WAS HIRED BY THE RESPONDENT IN DECEMBER 1963 AS A WIREMAN ERECTOR AND IN FEBRUARY 1964 WAS PROMOTED TO WIREMAN ERECTOR CLASS TWO WHICH CLASSIFI-CATION HE HELD UNTIL THE TERMINATION OF HIS EMPLOYMENT ON AUGUST 26TH, 1965. THE EVIDENCE IS THAT THE AGGRIEVED PERFORMED HIS WORK WELL AND WAS WELL REGARDED BY THE COMPANY. THERE HAVE BEEN NO ADVERSE ENTRIES IN HIS PERSONNEL RECORD. THE AGGRIEVED WOULD APPEAR TO HAVE A SOMEWHAT VOLATILE PERSONALITY AND TWO OR THREE INCIDENTS ATTRIBUTABLE TO IT WERE DESCRIBED DURING THE COURSE OF THE EVIDENCE. IT IS SUFFICIENT TO SAY THAT NONE OF THESE INCIDENTS WAS RE-GARDED AT THE TIME OF ITS OCCURRENCE AS INVOLVING ANY SERIOUS BREACH OF DISCIPLINE AND CERTAINLY NONE OF THEM WAS THE SUBJECT OF ANY DISCIPLINARY ACTION. THE RELATION-SHIP BETWEEN THE AGGRIEVED AND HIS SUPERVISOR LESLIE HARPER APPEARS, ON THE EVIDENCE, TO BE A GOOD ONE: THE EVIDENCE ON BEHALF OF BOTH THE AGGRIEVED AND THE RESPONDENT IS THAT THEY ENJOYED A CORDIAL RELATIONSHIP.

ON AUGUST 6TH. 1965. HENNESSEY MADE INQUIRIES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WITH RESPECT TO UNION ORGANIZATION AMONG EMPLOYEES OF THE RESPONDENT. ON AUGUST 8TH MEETING OF EMPLOYEES WAS HELD AT WHICH APPLICA-TIONS FOR MEMBERSHIP WERE MADE AND ON AUGUST 9TH THE APPLICA-TION FOR CERTIFICATION WAS MADE TO THIS BOARD. THE BOARD HELD A HEARING ON AUGUST 20TH AND ON AUGUST 23RD THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 636 WAS CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT FOLLOWING THE MAKING OF THE APPLICATION FOR CERTIFICATION ON AUGUST 9TH, EFFORTS WERE MADE BY THE RESPONDENT TO DETERMINE THE EXTENT OF UNION MEMBERSHIP AMONGST ITS EMPLOYEES AND THE PERSONS INVOLVED. ON ALL THE EVIDENCE, THE BOARD CONCLUDES THAT THE RESPONDENT BECAME AWARE THAT THE AGGRIEVED WAS ONE OF THE PRIME INSTIGATORS OF UNION ORGANIZATION AMONG ITS EMPLOYEES.

FOLLOWING THE CERTIFICATION OF THE TRADE UNION AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT THE CORDIALITY WHICH HAS PREVIOUSLY CHARACTERIZED THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE AGGRIEVED WAS REPLACED BY A REQUIREMENT OF STRICT CONFORMITY. NEW REGULATIONS WERE IM-POSED GENERALLY ON EMPLOYEES AND THE AGGRIEVED AND OTHER EMPLOYEES WHO HAD BEEN ACTIVE ON BEHALF OF THE UNION WERE PARTICULAR OBJECTS OF SURVEILLANCE.

ON AUGUST 26TH HENNESSEY RECEIVED A TELEPHONE CALL FROM HIS WIFE DURING WORKING HOURS. AS A RESULT OF THAT CALL HE RESOLVED TO MAKE A FURTHER PERSONAL TELEPHONE CALL. IT HAD BEEN COMPANY PRACTICE TO PERMIT A REASONABLE NUMBER OF PERSONAL CALLS TO BE MADE AND HENNESSEY'S EVIDENCE WAS THAT HE CONSIDERED THIS CALL TO BE URGENT AND THAT IN ANY

EVENT HE WAS UNABLE TO WORK AT THAT MOMENT AS HE WAS AWAITING SUPPLY OF CERTAIN NECESSARY PARTS. THE SUPERVISOR HARPER REFUSED PERMISSION TO MAKE THE CALL BUT HENNESSEY PERSISTED AND MADE THE CALL IN DEFIANCE OF HARPER'S INSTRUCTIONS. A FEW MOMENTS LATER HARPER, AFTER A BRIEF CONSULTATION WITH ROGERS, THE PRESIDENT OF THE RESPONDENT, DISCHARGED THE AGGRIEVED. NO REASON FOR HIS DISCHARGE WAS THEN GIVEN THE AGGRIEVED ALTHOUGH AT THE HEARING HARPER TESTIFIED THAT HE DISCHARGED THE AGGRIEVED PRIMARILY BECAUSE HE HAD BEEN ARROGANT AND, IN PART, BECAUSE OF AN INCIDENT WHICH HAD OCCURRED SOME TIME PREVIOUSLY IN WHICH THE AGGRIEVED HAD USED OBSCENE LANGUAGE TOWARD A FELLOW EMPLOYEE. (THIS LATTER INCIDENT WAS AMONG THOSE REFERRED TO IN PARAGRAPH 2 ABOVE. IT HAD APPARENTLY GONE UNREMARKED BY THE RESPONDENT AT THE TIME).

WHILE IT MAY WELL BE THAT THE INCIDENT OVER THE TELEPHONE CALL WAS AN INSTANCE OF INSUBORDINATION WHICH CONSIDERED APART FROM ALL THE OTHER EVIDENCE WOULD CONSTITUTE GROUNDS FOR DISCIPLINE OR EVEN DISCHARGE, SUCH IS NOT THE ISSUE BEFORE THIS BOARD. THE ISSUE WITH WHICH WE ARE CONCERNED IS WHETHER OR NOT THE AGGRIEVED WAS DISCHARGE CONTRARY TO THE LABOUR RELATIONS ACT. THE THEORY ADVANCED BY COUNSEL FOR THE COMPLAINANT WAS THAT THE RESPONDENT HAD DETERMINED TO RID ITSELF OF THE AGGRIEVED BECAUSE OF HIS ACTIVITY ON BEHALF OF THE TRADE UNION AND DELIBERATELY SOUGHT AN OCCASION WHEN HE COULD BE DISCHARGED ON SOME PLAUSIBLE GROUND. THAT IS TO SAY, THE RESPONDENT, IN EFFECT, PROVOKED THE CONDUCT ON WHICH IT NOW RELIES AS A GROUND FOR DISCHARGE. HAVING CONSIDERED ALL OF THE EVIDENCE IT IS OUR OPINION THAT HIS THEORY IS ON THE BALANCE OF PROBABILITIES CORRECT. THIS CONCLUSION, OF COURSE, IMPLIES NO CONDONATION OF THE AGGRIEVED'S CONDUCT ON THE OCCASION IN QUESTION.

THE BOARD IS SATISFIED THAT THE COMPLAINANT GERRARD HENNESSEY WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT.

AT THE TIME OF HIS DISCHARGE THE COMPLAINANT WAS EARNING THE SUM OF \$2.25 PER HOUR AND NORMALLY WORKED FORTY HOURS PER WEEK. SINCE HIS DISCHARGE AND AT LEAST UNTIL THE HEARING OF THIS MATTER THE COMPLAINANT HAS BEEN UNABLE TO WORK AT HIS TRADE AND HAS RECEIVED WORKMEN'S COMPENSATION PAYMENTS IN THE AMOUNT OF \$72.50 PER WEEK IN RESPECT OF AN INJURY SUFFERED BY HIM SHORTLY BEFORE HIS DISCHARGE. THE UNCONTRADICTED EVIDENCE IS THAT THE COMPLAINANT AS A TERM OF HIS EMPLOYMENT WAS TO BE PAID THE DIFFERENCE BETWEEN HIS NORMAL WAGES AND ANY WORKMEN'S COMPENSATION PAYMENTS RECEIVED AS A RESULT OF AN INDUSTRIAL INJURY.

OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

<sup>(1)</sup> THE RESPONDENT SHALL FORTHWITH REINSTATE AND

EMPLOY GERRARD HENNESSEY TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HIS DISCHARGE ON AUGUST 26TH, 1965.

- (2) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM AUGUST 26TH, 1965 TO AND INCLUDING NOVEMBER 24TH, 1965, THE RESPONDENT SHALL FORTHWITH PAY GERRARD HENNESSEY THE SUM OF \$210.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY GERRARD HENNESSEY BETWEEN THE DATE OF THE HEARING ON NOVEMBER 24TH, 1965, AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

BOARD MEMBER F. W. MURRAY DISSENTED AND SAID:-

" DISSENT.

On careful examination of all the circumstances Leading up to the discharge on August 26th, and all occurring on that date, I have concluded that the aggrieved, Gerrard Hennessey, was not dealt with contrary to The Labour Relations Act.

FROM THE EVIDENCE I HAVE CONCLUDED THAT LESLIE HARPER. ONE OF THE AGGRIEVED S SUPERVISORS, WAS DISTURBED BY THE CONDUCT OF THE AGGRIEVED, IN THAT HE DID OBSERVE HIM ACCOMPLISHING VERY LITTLE WORK FROM THE TIME HE HAD REPORTED FOR WORK UNTIL THE TIME HE HAD RESOLVED TO MAKE A FURTHER TELEPHONE CALL. FOLLOWING THE ONE FROM HIS WIFE CONCERNING HIS BROTHER. THE SUPERVISOR, HARPER, KNOWING THAT THE EMPLOYEE HAD ALREADY RECEIVED ONE TELEPHONE CALL FROM HIS WIFE, AND OTHERWISE HAD ACCOMPLISHED VERY LITTLE WORK TO THAT POINT, WAS THEN ADVISED BY THE AGGRIEVED THAT HE HAD TO LEAVE VERY SHORTLY ANYWAY BECAUSE HE HAD AN APPOINTMENT WITH THE DOCTOR. AT THIS JUNCTURE, HE ADVISED THE AGGRIEVED THAT HE COULD MAKE ANY ADDITIONAL TELEPHONE CALLS HE DEEMED NECESSARY AFTER HE HAD CLOCKED OUT IN PREPARATION FOR KEEPING HIS APPOINTMENT WITH THE DOCTOR. | HAVE CONCLUDED THAT MR. HARPER WAS NOT DENYING THE AGGRIEVED HENNESSEY FROM MAKING A TELEPHONE CALL AND USING THE COMPANY TELEPHONE, HE WAS MERELY DENYING HIM THE

FURTHER USE OF THE PHONE WHILE ON COMPANY TIME AT THAT JUNCTURE.

THE EVIDENCE FURTHER CLEARLY INDICATES THAT THE AGGRIEVED REFUSED TO OBEY THESE INSTRUCTIONS, WAS ARROGANT AND INSOLENT, AND IN SPITE OF THESE SPECIFIC INSTRUCTIONS, MADE THE TELEPHONE CALL IN DEFIANCE OF MR. HARPER.

THE NATURE OF THE TELEPHONE CALL COULD NOT BE DESCRIBED AS AN EMERGENCY CALL, WHEREIN AN EMPLOYEE WAS SEEKING THE WHEREABOUTS OF HIS BROTHER OR INDEED ALERTING ANY EMERGENCY ACTION, SUCH AS CONTACTING THE POLICE TO INVESTIGATE THE WHEREABOUTS OF HIS BROTHER. THE EVIDENCE CLEARLY INDICATES THAT HARPER INDEED WAS PROVOKED BY THE INTELLIGENCE HARPER HAD AT THE TIME, NAMELY, THAT THE AGGRIEVED HAD DONE VERY LITTLE OR NO WORK FROM THE TIME HE HAD STARTED IN THE MORNING TO THE TIME HE WAS ADVISED THAT THE AGGRIEVED WAS GOING TO TAKE FURTHER TIME OFF TO KEEP A DOCTOR'S APPOINTMENT, ALBEIT, IT WAS LATER LEARNED THAT THE AGGRIEVED WAS AWAITING A SUPPLY OF PARTS AND ALLEGES IT WAS FOR THIS REASON THAT HE WAS STANDING AROUND AND NOT PERFORMING HIS NORMAL FUNCTIONS.

WHILE HIS SUPERVISOR, MR. HARPER, AND ANY OTHER COMPANY REPRESENTATIVES MAY HAVE BEEN ANNOYED AT THE AGGRIEVED BECAUSE OF HIS UNION ACTIVITY, THE QUESTION BEFORE THE BOARD IS CLEARLY, WAS HE DEALT WITH BY THE RESPONDENT IN DISMISSING THE AGGRIEVED CONTRARY TO THE LABOUR RELATIONS ACT. I HAVE CONCLUDED THAT BY THE AGGRIEVED'S OWN ARROGANT AND INSOLENT MANNER AND DEFIANT ACTION, HE IS THE AUTHOR OF HIS OWN MISFORTUNE, AND THAT HE WAS DISCHARGED FOR CAUSE, AND ACCORDINGLY HE HAS FAILED TO PROVE THAT HE WAS DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT.

| WOULD DISMISS THIS APPLICATION."

10848-65-U: Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees Local Union No. 352, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Weaver Coal Company (Respondent).

10942-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. NATIONAL STEEL CAR CORPORATION LIMITED (RESPONDENT).

10968-65-U: RAY MAC ADAM (COMPLAINANT) v. CANADIAN DREDGE & DOCK CO. LIMITED, THE J. P. PORTER COMPANY LIMITED (A JOINT VENTURE) (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR REASONS GIVEN IN WRITING THE COMPLAINANT IS GRANTED THE RELIEF ASKED. THE BOARD'S DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS SET OUT IN THE WRITTEN REASONS."

11055-65-U: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL UNION 101 (COMPLAINANT) v. THE BECKER MILK COMPANY (RESPONDENT).

11065-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CANADA TALC INDUSTRIES LTD. (RESPONDENT).

11101-65-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION Local 412 A.F. of L.,-C.I.O.,-C.L.C. (COMPLAINANT) v. ALGONQUIN HOTEL (Soo) LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT LEONARD RENAUD DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN THE BOARD'S DECISION DATED DECEMBER 13TH, 1965, IN AN APPLICATION MADE BY THE COMPLAINANT FOR CERTAIN EMPLOYEES OF THE RESPONDENT IN BOARD FILE No. 11127-65-R.

THE BOARD IS SATISFIED THAT LEONARD RENAUD WAS DISCHARGED BY THE RESPONDENT ON NOVEMBER 8TH, 1965, CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT.

THE BOARD DETERMINES AND DIRECTS

- (A) THAT LEONARD RENAUD SHALL BE REINSTATED FORTHWITH
  IN THE POSITION HE HELD AT THE TIME OF HIS DISCHARGE;
- (B) THAT THE RESPONDENT PAY TO LEONARD RENAUD FORTHWITH THE SUM OF \$165.00 BEING THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY LEONARD RENAUD BETWEEN THE DATE OF HIS DISCHARGE AND DECEMBER 10TH, 1965;
- (c) That the parties meet forthwith with a view to agreeing on the amount of loss of earnings that Leonard Renaud sustained by reason of his having been discharged contrary to the Act between December 10th, 1965 and the date of his reinstatement; and
- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH C HEREOF WITH 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE AN OPPORTUNITY TO MAKE EVIDENCE AND REPRESENTATIONS AS TO THE AMOUNT TO BE PAID TO LEONARD RENAUD."

11130-65-U: United Steelworkers of America (Complainant) v. Dafew Manufacturing Limited (Respondent).

11159-65-U: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Local 647 (Complainant) v. Kingsley Transport Limited (Respondent).

11188-65-U: James Speirs (Complainant) v. Industrial Training Branch of the Department of Labour (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 655 ).

## APPLICATION UNDER SECTION 47A DISPOSED OF DURING DECEMBER

10656-65-M: Local 581, International Union of Electrical, Radio and Machine Workers (Applicant) v. Premier Automotive Units Limited; Nasco Industries Limited; Nasco Industries (1965) Limited; Trans-O-Matic Limited; Nasco Products Limited, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America - U.A.W. and its Local 525 (Respondents).

UNIT: "ALL EMPLOYEES OF NASCO PRODUCTS LIMITED AT HAMILTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF."

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND THE CIRCUMSTANCES OF THIS CASE).

NUMBER OF NAMES ON REVISED VOTERS! LIST 228 NUMBER OF BALLOTS CAST 228 NUMBER OF SPOILED BALLOTS 2 NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, LOCAL 581, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS 100 NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENTS, INTERNATIONAL UNION. UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - U.A.W. AND ITS LOCAL 525 126

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

."This is an application for a declaration pursuant to section 47a (5)(b) of The Labour Relations act concerning which of the two unions, the applicant Local 581, international Union of Electrical, Radio and Machine Workers, or the respondents the international Union, United Automobile, Aerospace and Agricultural Implement Workers of America - U.A.W. and its Local 525, shall be the bargaining agent for the employees of the respondent Nasco Products Limited.

THE RESPONDENT PREMIER AUTOMOTIVE UNITS LIMITED ENTERED INTO A COLLECTIVE AGREEMENT DATED JUNE 1ST, 1964, WITH THE APPLICANT UNION EFFECTIVE TO MAY 31ST, 1966. IN JUNE OF 1965, THIS RESPONDENT

HAD ITS NAME CHANGED TO NASCO INDUSTRIES (1965) LIMITED. THE BARGAINING UNIT DESCRIBED IN THE FOREGOING AGREEMENT IS AS FOLLOWS: "ALL EMPLOYEES OF PREMIER AUTOMOTIVE UNITS LIMITED NOW NASCO INDUSTRIES (1965) LIMITED AT HAMILTON, SAVE AND EXCEPT FOREMEN, WORKING FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

THE RESPONDENTS NASCO PRODUCTS LIMITED AND TRANS-O-MATIC LIMITED ENTERED INTO A COLLECTIVE AGREEMENT DATED JANUARY 1ST, 1964, WITH THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - U.A.W. AND ITS LOCAL 525 EFFECTIVE TO JANUARY 1ST, 1966. THE BARGAINING UNIT DESCRIBED IN THIS AGREEMENT IS AS FOLLOWS: "ALL EMPLOYEES OF NASCO PRODUCTS LIMITED AND TRANS-O-MATIC LIMITED AT THE HAMILTON PLANTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, SALES STAFF AND OFFICE STAFF."

On or about June 30th, 1965, Nasco Products Limited became the purchaser and transferee of the businesses and operations of Nasco Industries (1965) Limited and Trans-O-Matic Limited. The businesses and operations of these companies were thereafter consolidated and are now merged with and conducted as a single undertaking by Nasco Products Limited. The former employees of Nasco Industries (1965) Limited and Trans-O-Matic Limited were hired by Nasco Products Limited and Have been intermingled with the latter company's employees.

IT IS AGREED BY ALL THE PARTIES THAT THE TRANSACTION RELATING TO THE ACQUISITION BY NASCO PRODUCTS LIMITED OF THE BUSINESSES AND OPERATIONS OF NASCO INDUSTRIES (1965) LIMITED AND TRANS-0-MATIC LIMITED CONSTITUTE DISPOSITIONS OF BUSINESSES TO NASCO PRODUCTS LIMITED WITHIN THE MEANING OF SECTION 47A (5). THE PARTIES ALSO AGREE THAT THE QUESTION AS TO WHICH UNION SHOULD REPRESENT THE EMPLOYEES SHOULD BE DETERMINED BY A REPRESENTATION VOTE TAKEN AMONG THE EMPLOYEES OF NASCO PRODUCTS LIMITED.

The Board is in agreement with the parties that a representation vote among the employees should be directed under section 47a (7)."

THE BOARD FURTHER ENDORSED THE RECORD AS FOLLOWS:-

"IN ACCORDANCE WITH THE WRITTEN REASONS FOR THE DECISIONS OF THE MAJORITY, FROM WHICH, FOR HIS REASONS GIVEN IN WRITING, DEPUTY VICE-CHAIRMAN, L. A. MACLEAN DISSENTS, THE BOARD DECLARES THAT THE RESPONDENT UNIONS, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - U.A.W. AND ITS LOCAL 525, ARE THE BARGAINING AGENTS FOR THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED AS :-

ALL EMPLOYEES OF NASCO PRODUCTS LIMITED AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF."

## APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING DECEMBER

9845-64-M: GENERAL WORKERS' LOCAL 800 INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SUFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-C10-CLC (APPLICANT) v. LOBLAW GROCETERIAS Co., LIMITED; SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENTS).v. RETAIL CLERKS UNION LOCAL No. 206, CHARTERED BY THE INTERNATIONAL ASSOCIATION (INTERVENER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"FOR OUR REASONS GIVEN IN WRITING, WE FIND THAT SUPER CITY DISCOUNT FOODS LIMITED IS THE EMPLOYER OF THE EIGHT EMPLOYEES CONCERNED IN THIS APPLICATION."

BOARD MEMBER M.C. HAY SAID :-

"FOR MY REASONS GIVEN IN WRITING, I FIND THAT SUPER CITY DISCOUNT FOODS LIMITED IS THE EMPLOYER OF THE EIGHT EMPLOYEES NAMED IN THIS APPLICATION."

10188-64-M: Local Union No. 1005 United Steelworkers of America (Applicant) v. The Steel Company of Canada Limited Hilton Works (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DECLARES THAT THE PERSONS IN THE EMPLOY OF THE RESPONDENT IN THE OCCUPATIONAL CLASSIFICATIONS OF 0.H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 148' PLATE MILL EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1 (3) (B) OF THE LABOUR RELATIONS ACT.

THE APPLICATION ACCORDINGLY IS TERMINATED."

10864-65-M: THE CORPORATION OF THE CITY OF LONDON (APPLICANT) v. LOCAL #101, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT). (WITHDRAWN).

10871-65-M: NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"HAVING REGARD TO THE TERMS OF THE AGREEMENT BETWEEN THE PARTIES DATED THE 1ST DAY OF DECEMBER, 1965 IN THIS MATTER, THIS APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT AND BY LEAVE OF THE BOARD."

10964-65-M: LODGE 1105, I.A. OF M. (APPLICANT) V. KOEHRING-WATEROUS LTD. (RESPONDENT). (WITHDRAWN).

10600-65-M: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, C.L.C. (Trade Union) v. L & M. Food Market (Ontario) Limited (Employer).

(SEE INDEXED ENDORSEMENR PAGE 656 ).

11093-65-M: GENERAL WORKERS! LOCAL 800 INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AND THE INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (TRADE UNION) v. KRUN-CHEE POTATO CHIP COMPANY DIVISION OF SUNSHINE BISCUITS (CANADA) LIMITED (EMPLOYER).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"The above case was referred to the Board by the Minister of Labour, pursuant to the provisions of section  $79\underline{a}$  of The Labour Relations Act.

THE MINISTER HAS INFORMED THE BOARD THAT THE TRADE UNION AND THE EMPLOYER HAVE CONCLUDED A COLLECTIVE AGREEMENT AND THAT, UNDER THE CIRCUMSTANCES, THE REFERENCE MADE BY THE MINISTER TO THE BOARD IS WITHDRAWN.

THIS PROCEEDING IS HEREBY TERMINATED."

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

11103-65-R: Local 280 of the Hotel & Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C. (RESPONDENT) v. Gold & Kay Investment Limited Known as (Wheat Sheaf Public House) (RESPONDENT). (GRANTED DECEMBER, 1965).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"Subsequent to the Board's decision of December 6th, 1965, the Board received a letter dated December 15th, 1965, from three persons who represented a group of employees at the hearing in this matter requesting the Board to reconsider its decision. While the three signatories to the letter state that they were not properly informed as to the procedure, the Board is of opinion that the information contained in the Notice to Employees of Application for Certification (Form 5) and in particular Item 8 thereof is sufficient instruction to employees to cause them to be aware that they are required to "produce a witness or witnesses who will be able to testify from his or their personal knowledge or observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained".

THE BOARD IS ALSO OF THE OPINION THAT THERE IS NOTHING IN THE OBJECTORS LETTER WHICH WOULD CAUSE THE BOARD TO RECONSIDER, VARY OR REVOKE ITS DECISION OF DECEMBER 6TH, 1965, IN THIS MATTER."

## INDEXED ENDORSEMENTS - CERTIFICATION

10829-65-R: Local 18, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Reel-Pack Limited (Respondent).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

" AT THE HEARING OF THIS APPLICATION | HARRY JACKSON GAVE EVIDENCE IN SUPPORT OF TWO DOCUMENTS (HEREINAFTER REFERRED TO AS PETITIONS) SUBMITTED TO THE BOARD WHICH ARE INDICATIVE OF OPPOSITION OF SOME OF THE EMPLOYEES OF THE RESPONDENT TO THIS APPLICATION. HE TESTIFIED THAT HE ORIGINALLY PREPARED A COUPLE OF DOCUMENTS EXPRESSING OPPOSITION TO THE INSTANT APPLI-CATION WHICH WERE CIRCULATED IN THE PLANT DURING WORKING HOURS AND BREAD PERIODS OF SEPTEMBER 14TH AND 15TH. JACKSON FURTHER TESTIFIED THAT R. HAZARD AND A. SHARSHIN ASSISTED HIM IN THE CIRCULATION OF THESE DOCUMENTS AND IN THE SECURING OF SIGNATURES UPON THEM. THERE IS NO EVIDENCE AS TO WHAT HAPPENED TO THESE DOCUMENTS BUT, IN ANY EVENT, JACKSON STATED THAT ON THE EVENING OF SEPTEMBER 15TH, 1965, AFTER WORKING HOURS, HE WENT TO THE OFFICES OF A SOLICITOR WHO ON THAT OCCASION PREPARED THE HEAD-ING ON THE TWO PETITIONS WHICH WERE SUBMITTED TO THE BOARD. JACKSON'S EVIDENCE IS THAT UPON LEAVING THE SOLICITOR'S OFFICE HE SECURED SOME SIGNATURES OF EMPLOYEES ON THE PETITION AT THEIR HOMES THAT EVENING AND THAT HE SECURED THE REMAINING SIGNATURES ON THE PETITIONS THE FOLLOWING DAY SEPTEMBER 16TH DURING THE BREAK PERIODS OUTSIDE THE PLANT OF THE RESPONDENT.

HAVING REGARD TO THE EVIDENCE THAT JACKSON WAS THE ORIGINATOR OF BOTH THE EARLIER DOCUMENTS EXPRESSING OPPOSITION TO THE INSTANT APPLICATION AND THE PETITIONS BEFORE THE BOARD, AND TAKING INTO ACCOUNT THE CLOSE PROXIMITY IN TIME OF THE PREPARATION AND CIRCULATION OF THE TWO SETS OF DOCUMENTS. WE FIND THAT THE PETITIONS WERE DERIVED FROM AND ARE DEPENDENT UPON THE EARLIER DOCUMENTS. THE BOARD ACCORDINGLY MUST LOOK TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE EARLIER DOCUMENTS UPON WHICH THE PETITIONS BEFORE THE BOARD ARE BASED (SEE LAKEHEAD NEWSPRINT LIMITED CASE O.L.R.B. MONTHLY REPORT, FEBRUARY 1961, P. 397; MERCHANT PAPER COMPANY (WINDSOR) LIMITED CASE O.L.R.B. MONTHLY REPORT, APRIL 1965, P. 12). IN VIEW OF THE EVIDENCE THAT TWO FOREMEN WHO ARE MEMBERS OF MANAGEMENT ASSISTED IN THE CIRCULATION OF THE EARLIER DOCUMENTS IN OPPOSI-TION TO THIS APPLICATION, IT IS APPARENT THAT THE RESPONDENT GAVE ACTIVE AND OPEN SUPPORT TO JACKSON AND HIS ENDEAVOURS TO OPPOSE THE APPLICANT TRADE UNION. HAVING REGARD TO THE EVIDENCE OF MANAGEMENT'S SUPPORT WE DO NOT FIND THAT THE PETITIONS CAST SUCH DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO REQUIRE THE BOARD TO SEEK CONFIRMATORY EVIDENCE OF A REPRESENTA-TION VOTE."

11119-65-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS! INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. BLONDIE CLEANERS (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification. There was filed in opposition to the application a statement of desire, or petition, signed by nineteen employees of the respondent. Ruth Ann Denomme gave evidence in support of the petition.

THE BOARD'S REQUIREMENTS WITH RESPECT TO TESTIMONY
TO BE ADDUCED IN SUPPORT OF A PETITION ARE SET OUT IN THE
NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION (FORM 5).
THE WITNESS MUST TESTIFY AS TO (A) THE CIRCUMSTANCES CONCERNING
THE ORIGINATION OF THE MATERIAL FILED AND (B) THE MANNER IN
WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE BASIS OF THESE
REQUIREMENTS IS TO BE FOUND IN SECTION 11(3)(A) AND (B) OF THE
BOARD'S RULES OF PROCEDURE.

IN THE INSTANT CASE THE EVIDENCE WITH RESPECT TO THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED WAS SATISFACTORY. THE EVIDENCE OFFERED WITH RESPECT TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE PETITION CONSISTED SOLELY OF THE STATEMENT BY RUTH ANN DENOMME THAT THE PREAMBLE TO THE PETITION HAD BEEN WRITTEN OUT BY JO-ANN RENAUD. JO-ANN RENAUD APPEARED AT THE HEARING AS ONE OF THE REPRESENTATIVES OF THE GROUP OF EMPLOYEES PRESENTING THE PETITION.

IT IS THE OPINION OF THE BOARD THAT WHILE THE EVIDENCE AS TO ORIGINATION WHICH WAS OFFERED IS MATERIAL, IT IS, STANDING IN ISOLATION, INSUFFICIENT TO PROVIDE THE BOARD WITH THE KIND OF REASONABLY COMPREHENSIVE EXPOSITION OF THE CIRCUMSTANCES SURROUND-ING THE ORIGINATION OF THE PETITION UPON WHICH THE VALIDITY OF THE DOCUMENT, AS AN EXPRESSION OF THE TRUE DESIRE OF THE EMPLOYEES, COULD PROPERLY BE JUDGED.

AT THE CONCLUSION OF THE TESTIMONY GIVEN BY RUTH ANN DENOMME SHE AND JO-ANN RENAUD WERE ASKED IF THEY HAD ANY FURTHER EVIDENCE TO OFFER ON THE QUESTION OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT. BOTH LADIES INDICATED THAT THEY HAD NO MORE EVIDENCE TO OFFER. THE QUESTION WAS PUT A SECOND TIME AND THE LADIES AGAIN DECLINED TO OFFER FURTHER TESTIMONY.

IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

"| DISSENT.

THE BOARD HAS ALWAYS CONDUCTED ITS OWN ENQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF A PETITION FILED BY EMPLOYEES IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION. THIS POLICY HAS HELD EVEN WHEN THE EMPLOYEES ARE REPRESENTED BY COUNSEL.

IN THE INSTANT CASE, THE BOARD QUESTIONED UNDER OATH RUTH ANN DENOMME, ONE OF THE EMPLOYEES OF THE RESPONDENT WHO APPEARED ON BEHALF OF THE PETITIONERS. SHE GAVE EVIDENCE CONCERNING THE MANNER IN WHICH THE SIGNATURES ON THE PETITION WERE OBTAINED. WHEN SO QUESTIONED BY THE BOARD, SHE STATED THAT THE PREAMBLE TO THE PETITION HAD BEEN WRITTEN OUT BY JO-ANN RENAUD, ANOTHER EMPLOYEE, WHO WAS PRESENT WITH HER AT THE HEARING.

AT THE CONCLUSION OF THE EVIDENCE GIVEN BY RUTH ANN DENOMME, THE CHAIRMAN OF THE BOARD PANEL ASKED THE TWO REPRESENTATIVES OF THE PETITIONERS IF THEY HAD ANY FURTHER EVIDENCE TO OFFER IN RESPECT OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION. THEY INDICATED THEY HAD NO MORE EVIDENCE TO OFFER. IT WAS QUITE EVIDENT, HOWEVER, THAT THEY HAD NO PREVIOUS EXPERIENCE OF KNOWLEDGE OF BOARD PROCEDURE OR THAT THEY APPRECIATED THE SIGNIFICANCE OF THEIR REPLY.

WITH RESPECT, I SUBMIT THAT THE BOARD'S ENQUIRY MUST BE A SUFFICIENTLY COMPLETE AND OBJECTIVE ONE TO SATISFY IT THAT THE INTERVENING EMPLOYEES DID NOT RECEIVE EMPLOYER ASSISTANCE IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE PETITION. HAVING EMBARKED ON ITS OWN ENQUIRY AND ON ITS OWN VOLITION, THE BOARD CANNOT SHERK THIS RESPONSIBILITY OR SHIFT THE ONUS TO ADDUCE THE REQUIRED EVIDENCE TO THE PETITIONERS BEFORE IT HAS EXHAUSTED THE SOURCES OF INFORMATION AVAILABLE TO IT AT THE HEARING. HAVING BEEN INFORMED BY RUTH ANN DENOMME THAT THE PREAMBLE TO THE PETITION WAS WRITTEN OUT BY JO-ANN RENAUD, I SUBMIT IT WAS THE DUTY AND RESPONSIBILITY OF THE BOARD TO CALL JO-ANNE RENAUD TO THE WITNESS BOX TO ASCERTAIN, IF POSSIBLE, THE CIRCUMSTANCES CONCERNING THE ORIGINATION AND PREPARATION OF THE PETITION. HER EVIDENCE OR LACK OF SUCH EVIDENCE, WOULD HAVE ENABLED THE BOARD TO JUDGE THE PETITION ON ITS MERITS AND WITH THE KNOWLEDGE AND SATISFACTION THAT IT HAD DISCHARGED ITS RESPONSIBILITY TO OBTAIN ALL THE FACTS RATHER THAN TO HAVE DISMISSED THE INTER-VENTION BECAUSE OF THE LACK OF SUCH INFORMATION AND WITHOUT A TITTLE OF EVIDENCE OF ANY EMPLOYER ASSISTANCE.

IN THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION."

10243-65-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. ZEHR'S MARKETS LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for certification in which the Board on May 10th, 1965, directed that a representation vote be taken of the employees of the respondent in the bargaining unit.

The results of the representation vote, which was taken on June 4th, 1965, pursuant to the Board's direction, were challenged by the applicant and the matter came on for hearing

ON JULY 14th, 1965, to inquire into the allegations made
BY THE APPLICANT AGAINST THE RESPONDENT. AFTER THE APPLICANT'S
EVIDENCE WAS HEARD, THE APPLICANT AND THE RESPONDENT AGREED
THAT A NEW REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES
AND FURTHER AGREED THAT FOR THE PURPOSES OF THE NEW REPRESENTATION VOTE THE VOTERS! LIST BE COMPRISED OF THE PERSONS NAMED
IN THE BOARD'S DECISION DATED JULY 15th, 1965, IN THIS MATTER.

Pursuant to the Board's decision of July 15th, 1965, a NEW REPRESENTATION VOTE WAS TAKEN OF THE EMPLOYEES OF THE RESPONDENT ON AUGUST 20th, 1965.

FOLLOWING THE TAKING OF THE NEW REPRESENTATION VOTE ON AUGUST 20TH, 1965, THE APPLICANT AGAIN MADE ALLEGATIONS AGAINST THE RESPONDENT AND REQUESTED THAT THE REPRESENTATION VOTE BE SET ASIDE.

At the hearing in this matter, the applicant testified through its witnesses that the respondent, during the "silent period" immediately preceding the August 20th, 1965, vote, caused a notice to be posted on the respondent's bulletin board notify—ing the employees that commencing on or about September 2nd, 1965, the employees' work week would be reduced from 45 hours to  $40\frac{1}{2}$  hours per week. The respondent's store manager also testified that he had discussions with some 4 or 5 employees in the bargaining unit during the "silent period" and advised them that the hourly rate would be increased 5¢ an hour for the females and  $10\phi$  an hour for the male employees as partial compensation for the reduced work week.

While the respondent's vice-president testified that the New Work week and the increase in wages had been contemplated as early as last June, the decision to implement these changes on September 2nd, 1965, was not made until after the respondent received a copy of the Board's decision dated July 15th, 1965, wherein a new vote was directed. The respondent's vice-president further testified that while the decision to effect these changes applied to some 8 or 9 other stores there was nothing to prevent a formal notice to the employees of these changes to be delayed until after the representation vote in this matter was taken on August 20th, 1965, rather than during the "silent period" immediately prior to the vote.

IN THESE CIRCUMSTANCES, THE BOARD DOES NOT ACCEPT THE RESPONDENT'S CONTENTION THAT THE NOTICE TO THE EMPLOYEES WAS POSTED AT THE TIME IT WAS THROUGH INADVERTANCE. THE BOARD IS OF OPINION THAT HAVING REGARD TO THE HISTORY OF THIS APPLICATION THAT IT WAS THE RESPONDENT'S INTENTION TO DELIBERATELY ATTEMPT TO AFFECT THE OUTCOME OF THE REPRESENTATION VOTE ON AUGUST 20TH, 1965.

However, whether or not the respondent so intended, the Board finds that the posting of the notice and the advice to the EMPLOYEES ON THE CHANGE IN WAGE RATE WHICH TOOK PLACE ON AUGUST 18th, 1965 during the "silent period" was a contravention of the

"SILENT PERIOD" FIXED BY THE REGISTRAR IN THIS MATTER AND COULD BE REASONABLY EXPECTED TO AFFECT THE OUTCOME OF THE REPRESENTATION VOTE.

SINCE THE APPLICANT IN THIS CASE HAS NOT FILED EVIDENCE OF MEMBERSHIP FOR MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, THE APPLICANT IS NOT ENTITLED TO OUTRIGHT CERTIFICATION PURSUANT TO THE PROVISIONS OF SECTION 7 (5) OF THE ACT. HOWEVER, IN ALL THE CIRCUMSTANCES OF THIS CASE, THE BOARD IS OF THE OPINION THAT A NEW REPRESENTATION VOTE SHOULD BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT."

10789-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL.CIO.CLC. (APPLICANT) v. BEACH INDUSTRIES LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THIS IS AN APPLICATION FOR CERTIFICATION.

THE RESPONDENT RAISES THE OBJECTION THAT THIS APPLICATION IS NOT TIMELY, INASMUCH AS THERE IS A COLLECTIVE AGREEMENT PRESENTLY IN EFFECT BETWEEN THE RESPONDENT AND THE BEACH EMPLOYEES' ASSOCIATION. IF THIS AGREEMENT, WHICH BECAME EFFECTIVE AUGUST 3RD, 1964, AND EXPIRES AUGUST 2ND, 1966, IS A VALID COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, THEN THIS APPLICATION IS NOT TIMELY HAVING REGARD TO THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT.

THE BEACH EMPLOYEES! ASSOCIATION HAS NEVER BEEN CERTIFIED AS BARGAINING AGENT FOR ANY OF THE EMPLOYEES OF THE RESPONDENT AND HAS NEVER BEEN FOUND TO BE A TRADE UNION BY THIS BOARD. ALTHOUGH NOTIFIED, IT DID NOT APPEAR AT THE HEARING IN THIS MATTER. THERE WAS, HOWEVER, EVIDENCE LED ON BEHALF OF THE RESPONDENT EMPLOYER TO ESTABLISH THE VALIDITY OF THE DOCUMENT RELIED ON AS A COLLECTIVE AGREEMENT.

THE EVIDENCE ESTABLISHES THE AGREEMENT IN QUESTION AS THE MOST RECENT IN A SERIES OF AGREEMENTS WHICH HAVE BEEN MADE BETWEEN THE RESPONDENT AND THE BEACH EMPLOYEES' ASSOCIATION, THE FIRST HAVING BEEN MADE IN 1954. VIVA VOCE EVIDENCE WAS LET TO SHOW THAT IN 1954, WHEN THE ASSOCIATION WAS RECOGNIZED AS BARGAINING AGENT, THE ASSOCIATION DID IN FACT EXIST AS AN ORGANIZATION, AND THAT IT HAD A CONSTITUTION WHICH WAS THEN SHOWN TO THE PRESIDENT OF THE RESPONDENT COMPANY. WHILE THE EVIDENCE DOES NOT ESTABLISH THE EXTENT TO WHICH THE ASSOCIATION REPRESENTED EMPLOYEES OF THE RESPONDENT IN 1954, EVIDENCE WAS PRESENTED TO SHOW THAT SINCE THE SIGNING OF THE CURRENT AGREEMENT 44 OF THE RESPONDENT'S 52 EMPLOYEES HAD SIGNED CHECK-OFF AUTHORIZATION CARDS IN FAVOUR OF THE ASSOCIATION, AND THAT THESE WERE ALL IN FORCE AT THE DATE OF THE HEARING.

FOLLOWING THE HEARING OF THIS MATTER THE BOARD REQUESTED THE ASSOCIATION (WHICH HAD NOT APPEARED AT THE HEARING) TO FILE A COPY OF ITS CONSTITUTION, BY-LAWS OR OTHER MATERIALS PURPORTING TO CONTAIN RULES BY WHICH THE ASSOCIATION IS GOVERNED. TOGETHER WITH A LIST OF ITS OFFICERS. IN REPLY, THE BOARD RECEIVED A COMMUNICATION SIGNED BY THREE PERSONS, AS PRESIDENT, VICE-PRESI-DENT, AND SECRETARY AND TREASURER RESPECTIVELY. THE NAME OF THE PRESIDENT APPEARS AS ONE OF THE SIGNATORIES TO THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION. THESE OFFICERS OF THE ASSOCIATION STATED THAT THEY HAD SEARCHED THEIR FILES AS FAR BACK AS MAY 28TH. 1954. BUT HAD FOUND NO CONSTITUTION AND NO RECORD REFERRING TO ANY CONSTITUTION. AT THE SAME TIME, TWO EMPLOYEES, WHO HAD APPEARED IN OPPOSITION TO THE APPLICATION. SENT TO THE BOARD A BLANK PRINTED MEMBERSHIP CARD OF THE ASSOCIATION, WHICH MADE REFER-ENCE TO A "CONSTITUTION PASSED AT A MASS MEETING OF THE EMPLOYEES OF BEACH INDUSTRIES LTD. ON THE 4TH DAY OF MARCH 1954."

IN THESE CIRCUMSTANCES, THE IMPORTANT ISSUES TO BE DETERMINED ARE, FIRST, OF WHAT EFFECT, IF ANY, IS THE FAILURE OF THE ASSOCIATION TO FILE, AS REQUESTED, A COPY OF ITS CONSTITUTION? AND SECOND, ON WHOM DOES THE ONUS OF ESTABLISHING THE VALIDITY OR INVALIDITY OF THE COLLECTIVE AGREEMENT FALL?

AS TO THE FIRST ISSUE, IT IS OUR OPINION THAT THE FAILURE OF THE ASSOCIATION TO FILE A COPY OF ITS CONSTITUTION CANNOT OF ITSELF. AFFECT WHATEVER RIGHTS THE RESPONDENT MAY HAVE BY VIRTUE OF THE COLLECTIVE AGREEMENT. THESE RIGHTS SURELY CANNOT BE AFFECTED BY THE VAGARIES OF THE INTERNAL MANAGEMENT OF THE ASSOCIATION. IF THE AGREEMENT ON WHICH THE RESPONDENT RELIES IS A VALID COLLECTIVE AGREEMENT, THEN ITS VALIDITY WILL NOT BE AFFECTED BY THE PRESENT UNWILLINGNESS OF ONE OF THE PARTIES TO SUPPORT IT. IF IT WERE THE CASE THAT THE ASSOCIATION HAD BEEN DISSOLVED OR HAD CEASED TO EXIST, THEN THE COLLECTIVE AGREEMENT WOULD NOT (SUBJECT TO THE PROVISIONS OF SECTION 47 OF THE LABOUR RELATIONS ACT) BE A BAR TO THIS APPLICATION: SEE FOSTER-WHEELER, (1944) D.L.S. 7-1133; BREITHAUPT LEATHER, (1945) D.L.S. 7-1210; Power Food Markets, (1946) D.L.S. 7-1260. But such is not the CASE HERE, AND THE COLLECTIVE AGREEMENT IS NO LESS VALID BECAUSE THE OFFICERS OF THE ASSOCIATION DO NOT OPPOSE THIS APPLICATION. IT WAS OPEN TO THE APPLICANT TO CALL EVIDENCE WITH RESPECT TO THE EXISTENCE OF NON-EXISTENCE OF THE ASSOCIATION. BUT IT DID NOT SEE FIT TO DO SO.

AS TO THE SECOND ISSUE, WHERE A COLLECTIVE AGREEMENT, MADE AFTER VOLUNTARY RECOGNITION OF THE TRADE UNION PARTY TO THE AGREEMENT, IS RELIED ON AS A BAR TO AN APPLICATION FOR CERTIFICATION, IT IS, IN GENERAL, UPON THE PARTY RELYING ON THE AGREEMENT TO ESTABLISH ITS EXISTENCE. IN PARTICULAR, WHERE THE COLLECTIVE AGREEMENT IS SUBMITTED AS A BAR TO AN APPLICATION DURING THE FIRST YEAR OF THE AGREEMENT'S OPERATION, AND WHERE IT IS THE FIRST SUCH AGREEMENT BETWEEN THE PARTIES, THEN THE ONUS OF ESTABLISHING BOTH THAT THE TRADE UNION PARTY TO THE AGREEMENT IS IN FACT A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS

ACT - THE STATUS QUESTION - AND THAT IT REPRESENTED A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO - THE REPRESENTATION QUESTION - RESTS UPON THE PARTY RELYING ON THE AGREEMENT.

SEE, INTER ALIA, RAMSAY INDUSTRIES LIMITED, BOARD FILE NO. 10042-64-R, AND ROTOR ELECTRIC COMPANY LIMITED, O.L.R.B. MONTHLY REPORTS, AUGUST, 1965, P. 365. IT MAY BE NOTED ALSO THAT WHERE, IN SUCH CIRCUMSTANCES, AN APPLICATION IS MADE UNDER SECTION 45A OF THE ACT THAT ONUS LIKEWISE FALLS UPON THE PARTY OR PARTIES SEEKING TO UPHOLD THE AGREEMENT.

IN THE INSTANT CASE, HOWEVER, THE COLLECTIVE AGREEMENT IN QUESTION HAS BEEN IN FORCE FOR MORE THAN ONE YEAR. INDEED. THE BARGAINING RELATIONSHIP ON WHICH THE AGREEMENT IS BASED HAS, SO THE EVIDENCE ESTABLISHES, EXISTED FOR OVER ELEVEN YEARS. IN THESE CIRCUMSTANCES IT WOULD BE UNDULY ONEROUS ON THE RESPON-DENT - THE PARTY RELYING ON THE AGREEMENT - TO IMPOSE UPON IT THE ONUS OF PROOF EITHER OF THE STATUS OF THE ASSOCIATION OR OF ITS REPRESENTATION OF EMPLOYEES IN THE BARGAINING UNIT. TO DO SO WOULD BE TO PLACE AT HAZARD EVERY COLLECTIVE AGREEMENT BASED ON VOLUNTARY RECOGNITION WHERE THE TRADE UNION PARTY DOES NOT APPEAR TO SUPPORT THE AGREEMENT. INDEED, WERE THE EMPLOYER TO ADDUCE THE EVIDENCE RELEVANT TO SUCH A DETERMINATION, THE QUESTION MIGHT THEN ARISE WHETHER IT HAD INTERFERED WITH THE FORMATION OR ADMINISTRATION OF THE TRADE UNION. THE BOARD CONCLUDES THAT IN CIRCUMSTANCES SUCH AS THESE, THERE IS AN ONUS ON THE PARTY DENYING THE VALIDITY OF THE COLLECTIVE AGREEMENT TO MAKE OUT ITS CASE. THE APPLICANT PRESENTED NO EVIDENCE TO SHOW EITHER THAT THE ASSOCIATION WAS NOT A TRADE UNION, OR THAT IT WAS NOT REPRESENTATIVE OF EMPLOYEES IN THE BARGAINING UNIT. IN CORRESPONDENCE FOLLOWING THE HEARING THE APPLICANT MADE CERTAIN ASSERTIONS WITH RESPECT TO THE ASSOCIATION AND ITS ACTIVITIES, BUT IT WOULD BE MOST IMPROPER FOR THE BOARD TO RECEIVE EXTRA-CURIAL EVIDENCE IN THIS FASHION, AND WE HAVE NOT CONSIDERED THESE ASSERTIONS.

ON THE EVIDENCE, THEREFORE, IT APPEARS THAT THERE IS IN EFFECT A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE BEACH EMPLOYEES' ASSOCIATION. THIS COLLECTIVE AGREEMENT BECAME EFFECTIVE AUGUST 3RD, 1964, AND EXPIRES ON AUGUST 2ND, 1966. UNDER THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT, THEREFORE, THE APPLICATION IS UNTIMELY.

THE APPLICATION IS ACCORDINGLY DISMISSED."

BOARD MEMBER D.B. ARCHER DISSENTED AND SAID:-

" | DISSENT.

THIS IS AN APPLICATION FOR CERTIFICATION BY THE MOLDERS UNION FOR EMPLOYEES OF THE RESPONDENT. THERE WAS NO INTER-VENTION BY THE BEACH EMPLOYEES! ASSOCIATION. THE RESPONDENT COMPANY MADE ALL THE ARGUMENTS ON THEIR BEHALF AND TWO GIRLS

CLAIMING TO BE MEMBERS OF THE EMPLOYEES' ASSOCIATION APPEARED BEFORE THE BOARD, BUT WERE UNABLE TO GIVE ANY EVIDENCE AS TO THE FUNCTIONING OF THE ASSOCIATION. IN REPLY TO A QUESTION AS TO WHEN REGULAR MEETINGS WERE HELD, THE WITNESS, MISS RATHWELL SAID, "WE DON'T HOLD MEETINGS".

ALL THE EVIDENCE AS TO THE EXISTENCE OF THE EMPLOYEES'
ASSOCIATION WAS PRESENTED BY A COMPANY WITNESS, RUSSELL J.
BEACH, WHO TESTIFIED THE LAST MEETING WAS CALLED BY MANAGEMENT
TO SEE WHAT THE EMPLOYEES' ASSOCIATION WAS GOING TO DO. HE
TESTIFIED THAT THE OFFICERS TOLD HIM THEY COULD NOT SPEAK FOR
THE ASSOCIATION. HE THEN SAID A BALLOT VOTE WAS CONDUCTED.
RESULTS: 33 FOR THE MOLDERS; 8 AGAINST.

THE APPLICANT UNION MADE IT CLEAR THAT IF THE EMPLOYEES! ASSOCIATION CONTENDED IT WAS A TRADE UNION WITHIN THE MEANING OF THE ONTARIO LABOUR RELATIONS ACT THEN IT SHOULD BE HELD TO STRICT PROOF OF THAT CONTENTION.

Section 62 says "THE BOARD MAY DIRECT A TRADE UNION - -TO FILE WITH THE BOARD - - A COPY OF ITS CONSTITUTION AND BY-LAWS. THE BOARD IN THIS CASE ADJOURNED THE HEARING AND ASKED THE EMPLOYEES WHO APPEARED AT THE HEARING AND/OR THE EMPLOYER TO FILE A COPY OF THE CONSTITUTION. THEY ALSO WROTE TO THE PERSONS NAMED AS OFFICERS OF THE ASSOCIATION WITH THE SAME REQUEST. ALL OF THEM FAILED TO PRODUCE A CONSTITUTION. IT IS USUAL IN CASES SUCH AS THIS TO ALLOW OPPOSING PARTIES TO EXAMINE THE CONSTITUTION OR WHAT IS FILED IN LIEU OF A CONSTITUTION IN ORDER TO ATTACK THE STATUS OF THE UNION ENDEAVOURING TO OBTAIN OR MAINTAIN BARGAINING RIGHTS. THIS RIGHT WAS DENIED THE APPLICANT IN THIS PARTICULAR CASE. THE MAJORITY FINDS THE CONDITION OF STRICT PROOF "UNDULY ONEROUS" AND SUGGESTS THAT NO EVIDENCE NEED BE SUPPLIED BY THE ASSOCIATION; THAT THE ONUS OF PROOF THAT THE ASSOCIATION IS NOT A TRADE UNION RESTS WITH THE APPLICANT UNION. I CANNOT BELIEVE ASKING A TRADE UNION TO PROVE ITS STATUS IS "UNDULY ONEROUS". HAD THIS ASSOCIATION BEEN BEFORE THE BOARD OR HAD IT BEEN CERTIFIED ON A PREVIOUS OCCASION | MIGHT HAVE HAD SOME SYMPATHY WITH THE MAJORITY DECISION. BUT IN THE ABSENCE OF ANY OF THE NORMAL REQUISITES OF A TRADE UNION STRUCTURE, SUCH AS REGULAR MEETINGS, OR A CONSTITUTION, I CANNOT AGREE THAT THE ASSOCIATION, MERELY BECAUSE IT HAS BEEN IN EXISTENCE FOR OVER A YEAR, AUTOMATICALLY BECOMES A TRADE UNION WITHIN THE MEANING OF THE ONTARIO LABOUR RELATIONS ACT. I WOULD THEREFORE HAVE FOUND THAT THE AGREEMENT WAS NOT A BAR TO THE APPLICATION FOR CERTIFICATION OF THE MOLDERS."

10911-65-R: Warehousemen and Miscellaneous Drivers, Local Union 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Industrial & Domestic Protection (Armoured Car) Ltd. (Respondent) v. Industrial & Domestic Protection Company Limited (Party Respondent).

On November 3, 1965 THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE APPLICANT IN THIS CASE APPLIES TO BE CERTIFIED AS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPANY WHICH IT HAS DESCRIBED AS "INDUSTRIAL & DOMESTIC PROTECTION (ARMOURED CAR) LTD." ON OCTOBER 14TH, 1965, THIS COMPANY FILED A REPLY IN WHICH IT STATED THAT INDUSTRIAL & DOMESTIC PROTECTION (ARMOURED CAR) LTD. "HAS NO EMPLOYEES".

When the case came on for hearing on October 20th, counsel appearing for the named respondent company stated that the nature of the business engaged in by this company did not require it to have, nor did it maintain in its employ any employees. While he did not call any evidence to that effect, he outlined the nature of the business and operations of the company as follows:-

THE COMPANY ENTERS INTO SERVICE CONTRACTS WITH CUSTOMERS UNDER WHICH IT PROVIDES TO THE CUSTOMER A SECURITY VEHICLE AND DRIVER. WHILE THE RESPONDENT OWNS THE SECURITY VEHICLE, IT IS NOT THE EMPLOYER OF THE DRIVER. THE RESPONDENT HAS A CONTRACT WITH ANOTHER COMPANY, UNDER WHICH THAT COMPANY SUPPLIES THE DRIVER. THIS COMPANY. KNOWN AS INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED. SHARES THE SAME PREMISES AS THE RESPONDENT AND HAS THE SAME CORPORATE OFFICERS. THE RESPONDENT HAS NO SUPERVISORY OR DISCIPLINARY AUTHORITY WHATSOEVER OVER THE DRIVERS. THE DRIVERS ARE PAID BY A CHEQUE IN THE NAME OF INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED AND THE LATTER COMPANY REMITS TO THE PROPER AUTHORITIES, AS THEIR EMPLOYER, ALL MONIES IN RESPECT TO WORKMEN'S COMPENSATION, UNEMPLOYMENT INSURANCE, ONTARIO HOSPITAL SERVICES COMMISSION AND INCOME TAX. THE PERSONNEL WORKING FOR THE RESPONDENT COMPANY ARE ONLY ITS CORPORATE OFFICERS. HE PRODUCED A PHOTOGRAPH SHOWING PERSONS WHO HE SAID WERE EMPLOYEES OF INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED WEARING UNIFORMS BEARING A PLAINLY DISCERNIBLE INSIGNIA ON THEIR SHOULDERS CONTAINING THE NAME OF THAT COMPANY.

AFTER HEARING THE ABOVE STATEMENT OF COUNSEL FOR THE RESPONDENT, THE ACCURACY OF WHICH HE DID NOT CHALLENGE, THE REPRESENTATIVE FOR THE UNION INDICATED THAT THE APPLICANT MUST HAVE ERRED IN NAMING THE CORRECT EMPLOYER AND REQUESTED THE BOARD TO AMEND THE NAME OF THE RESPONDENT FROM THAT OF INDUSTRIAL & DOMESTIC PROTECTION (ARMOURED CAR) LTD. TO THAT OF INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED. HE STATED THAT THE APPLICANT WAS UNAWARE AT THE TIME THAT THERE WERE TWO COMPANIES INVOLVED IN THE OPERATION. HE STATED THAT THE APPLICANT HAD INSERTED THE WORDS "ARMOURED CAR" IN PARENTHESIS MERELY TO INDICATE THAT IT WAS THE EMPLOYEES WORKING IN THE ARMOURED CAR PART OF THE COMPANY FOR

WHICH THE APPLICANT WAS SEEKING BARGAINING RIGHTS.

While counsel for the respondent was careful to point out that he had no authority or instructions to appear or make representations on behalf of Industrial & Domestic Protection Company Limited, and that he was not doing so, he objected that there was no evidence before the Board which would warrant any finding that the applicant had named the wrong company as a result of a bona fide mistake on its part. In consequence, it was his contention that there was no evidence before the Board which would authorize an amendment under the provisions of section 78 of the Labour Relations Act. Section 78 provides:-

Where in any proceedings before the Board the Board is satisfied that a <u>Bona fide</u> mistake has been made with the result that the proper person or trade union has not been named as a party or has been incorrectly named, the Board may order the proper person or trade union to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just.

HIS CONTENTION, ON BEHALF OF HIS CLIENT THE NAMED RESPONDENT, WAS THAT, IN THE CIRCUMSTANCES, THE APPLICATION SHOULD BE DISMISSED. AS PART OF HIS ARGUMENT THAT THE APPLICATION COULD NOT BE AMENDED, HE REFERRED AND RELIED ON THE DECISION OF THE BOARD IN THE ALCAN COLONY CONSTRUCTION COMPANY CASE, O.L.R.B. MONTHLY REPORT, JUNE 1963, p. 172. THE PORTIONS OF THE BOARD'S DECISION IN THAT CASE WHICH ARE RELEVANT FOR PRESENT PURPOSES ARE AS FOLLOWS:-

A HEARING WAS DIRECTED IN THIS MATTER "TO HEAR EVIDENCE AND REPRESENTATIONS WITH RESPECT TO THE REQUEST OF THE APPLICANT TRADE UNION THAT THE BOARD AMEND THE NAME OF THE RESPONDENT IN ITS CERTIFICATE DATED 19th April, 1963."

THE LATTER DID NOT CALL ANY EVIDENCE IN SUPPORT OF THE REQUEST. HE STATED THAT THE APPLICANT HAD DESCRIBED THE RESPONDENT AS ALCAN COLONY CONSTRUCTION COMPANY BECAUSE THE BOARD HAD PREVIOUSLY ISSUED A CERTIFICATE TO ANOTHER UNION IN THAT NAME. WHILE IT IS TRUE THAT A CERTIFICATE WAS ISSUED TO ANOTHER UNION RESPECTING ALCAN COLONY CONSTRUCTION COMPANY, THERE IS NO MATERIAL EVIDENCE BEFORE THE BOARD SUBSTANTIATING THE CLAIM THAT THE APPLICANT IN THE PRESENT CASE RELIED ON THAT FACT. MR. FLOOK WAS NOT AVAILABLE TO GIVE EVIDENCE AND HIS LETTER REQUESTING THE AMENDMENT DID NOT SO ALLEGE. THE STATEMENT OF MR. FORGIE AT ITS VERY BEST CONSTITUTES HEARSAY EVIDENCE. EVEN IF WE WERE TO ACCORD IT WEIGHT WE WOULD THEN HAVE TO ASSESS IT IN THE LIGHT OF THE HEARSAY STATEMENTS MADE BY COUNSEL FOR ALCAN—COLONY

LTD., WITH RESPECT TO THE NAMES ON THE CONSTRUCTION MACHINERY AND ON THE CHEQUES. IN RELYING ON SECTION 78 OF THE LABOUR RELATIONS ACT THE ONUS IS CLEARLY ON THE APPLICANT TO SATISFY THE BOARD THAT THE MISTAKE WAS A BONE FIDE ONE. THE PURPOSE OF THE HEARING, AS SET OUT IN THE NOTICE OF HEARING, WAS TO RECEIVE EVIDENCE AND REPRESENTATIONS. WITHOUT CLEAR CUT EVIDENCE OF THE SURROUNDING CIRCUMSTANCES WE ARE UNABLE TO SAY WHETHER THE MISTAKE WHICH UNDOUBTEDLY WAS MADE, WAS A BONE FIDE ONE.

ASSUMING, BUT WITHOUT DECIDING, THAT THE BOARD HAS JURISDICTION TO ENTERTAIN THE REQUEST FOR AMENDMENT, IN THE CIRCUMSTANCES OUTLINED ABOVE, THIS REQUEST IS DENIED.

HE ALSO ARGUES, FOLLOWING THE ALCAN CASE, THAT THE BOARD OUGHT NOT TO CONSIDER JOINING THE OTHER COMPANY UNTIL THAT COMPANY HAS BEEN AFFORDED AN OPPORTUNITY OF PRESENTING ITS POSITION ON THE MATTER. WHILE THE BOARD IN THE ALCAN CASE WAS BEING ASKED TO AMEND THE NAME OF THE RESPONDENT IN A CERTIFICATE RATHER THAN, AS HERE, IN THE APPLICATION ITSELF, IT IS APPARENT THAT THE BOARD DEALT WITH THE REQUEST TO AMEND IN THE ALCAN CASE ON THE BASIS OF THE GENERAL REQUIREMENTS OF SECTION 78. THE CASE IS, THEREFORE, OF PRECEDENTIAL VALUE IN ITS APPLICATION TO THE FACTS OF THE INSTANT CASE.

THERE IS NO DOUBT, OF COURSE, THAT COUNSEL FOR THE NAMED RESPONDENT WAS ENTITLED TO TAKE THE POSITION THAT THE APPLICATION SHOULD BE DISMISSED AS AGAINST INDUSTRIAL & DOMESTIC PROTECTION (ARMOURED CAR) LTD. HOWEVER, ON HIS OWN STATEMENT, HE DID NOT REPRESENT INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED. WE ARE UNABLE TO APPRECIATE, THEREFORE, HOW HE HAS ANY LOCUS STANDI TO CHALLENGE THE PROPRIETY OR TO TAKE ANY POSITION WITH RESPECT TO THE JOINING BY AMENDMENT OR OTHERWISE OF INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED AS A REPONDENT EMPLOYER. COUNSEL HAS RELIED ON THE RULE EXPRESSED IN SALOMAN V. SALOMAN, [1897] A.C. 22, THAT THE TWO COMPANIES, HERE IN QUESTION, MUST BE REGARDED AS SEPARATE ENTITIES. IT HAS BEEN SAID THAT HE WHO RELIES ON TECHNICALITIES MUST, IN DOING SO, HIMSELF COMPLY WITH TECHNICA-LITIES. WHILE, ACCORDING TO WHAT WE ARE TOLD BY COUNSEL FOR THE RESPONDENT, THE TWO COMPANIES ARE APPARENTLY CONTROLLED, IF NOT OWNED, BY THE SAME PERSONS, CARRY ON BUSINESS IN THE SAME PREMISES, AND ARE INVOLVED INCLOSELY ASSOCIATED AND INTERDEPENDENT OPERATIONS OF IN A JOINT BUSINESS ENTERPRISE, WE ARE BOUND, IF WE APPLY THE PRINCIPLES OF SALOMAN V. SALOMAN, AS ARGUED BY COUNSEL FOR THE RESPONDENT, TO LOOK AT THEM AS SEPARATE ENTITIES HAVING SEPARATE INTERESTS. IF WE ACCEPT THE ARGUMENT OF COUNSEL FOR THE RESPON-DENT, IT IS MANIFEST THAT HE HAS NO AUTHORITY TO BE HEARD OR TO TAKE ANY POSITION AFFECTING THE INTERESTS OF THE INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED.

IT IS MANIFEST TO US THAT THE NAMES OF THE CORPORATE ENTITIES WITH WHICH WE ARE HERE CONCERNED ARE STRIKINGLY SIMILAR.

IN OUR OPINION, THE SIMILARITY BETWEEN THE NAMES IS SO CLOSE THAT THEY CANNOT HELP BUT PROVIDE AN INDUCEMENT OF CONFUSION AND ERROR ON THE PART OF THE UNWARY.

IN THE CIRCUMSTANCES, IT IS OUR OPINION, THAT INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED OUGHT TO BE JOINED AS A PARTY TO THESE PROCEEDINGS TO ENABLE THE BOARD TO INQUIRE INTO AND TO ADJUDICATE UPON THE QUESTION AS TO WHETHER OR NOT A PROPER BASIS EXISTS FOR JOINING IT AS THE EMPLOY OF THE EMPLOYEES CONCERNED IN THIS APPLICATION. THE INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED, IS, THEREFORE, FOR THESE LIMITED PURPOSES ONLY JOINED AS A PARTY TO THESE PROCEEDINGS.

IN VIEW OF THE FACT THAT THE REPRESENTATIVE OF THE UNION DID NOT CHALLENGE THE ACCURACY OF THE STATEMENT MADE BY COUNSEL FOR THE RESPONDENT THAT INDUSTRIAL & DOMESTIC PROTECTION (ARMOURED CAR) LTD. IS NOT THE EMPLOYER OF THE EMPLOYEES CONCERNED HEREIN, THIS APPLICATION MUST BE AND IS ACCORDINGLY DISMISSED IN SO FAR AS IT CONCERNS THE COMPANY KNOWN AS INDUSTRIAL & DOMESTIC PROTECTION (ARMOURED CAR) LTD."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

AT THE HEARING BEFORE THE BOARD PERTAINING TO THIS APPLICATION, THE CHAIRMAN OF THE PANEL ASKED THE REPRESENTATIVE OF THE APPLICANT IF HE WAS CALLING ANY EVIDENCE TO SHOW THAT THE MISTAKE MADE IN NAMING THE WRONG RESPONDENT WAS A BONA FIDE ONE. HE STATED HE WAS CALLING NO EVIDENCE CONCERNING THIS ASPECT OF THE CASE.

IN THE ALCAN COLONY CONSTRUCTION COMPANY CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1963, p. 172, THE BOARD STATED:-

IN RELYING ON SECTION 78 OF THE LABOUR RELATIONS ACT THE ONUS IS CLEARLY ON THE APPLICANT TO SATISFY THE BOARD THAT THE MISTAKE WAS A BONA FIDE ONE.

(EMPHASIS ADDED)

IN THE INSTANT CASE, THE APPLICANT DIDN'T EVEN ATTEMPT TO DISCHARGE THIS ONUS. ACCORDINGLY, I WOULD DISMISS THE APPLICATION WITHOUT QUALIFICATION EXCEPT THAT THE APPLICANT WOULD NOT BE PREJUDICED IN FILING A NEW APPLICATION IF IT SHOULD DESIRE TO DO SO."

THE APPLICATION WAS RELISTED FOR HEARING ON NOVEMBER 30, 1965 TO AFFORD THE APPLICANT AND INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED AN OPPORTUNITY TO ADDUCE EVIDENCE AND ARGUMENT AS TO WHETHER OR NOT THIS IS A PROPER CASE FOR NAMING INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED AS THE RESPONDENT EMPLOYER.

IN CONNECTION WITH THIS HEARING THE BOARD STATED:-

"IN RELYING ON SECTION 78 OF THE ACT, THE ONUS IS ON THE APPLICANT TO SATISFY THE BOARD THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER COMPANY HAS NOT BEEN NAMED AS THE RESPONDENT IN ITS APPLICATION. WHILE THE PURPOSE IN RELISTING THE APPLICATION FOR HEARING WAS TO PERMIT THE APPLICANT TO ADDUCE EVIDENCE TO SHOW THAT IT HAD MADE A BONA FIDE MISTAKE, THE APPLICANT DID NOT CALL ANY EVIDENCE.

IN THESE CIRCUMSTANCES, AND ASSUMING, BUT WITHOUT DECIDING, THAT THE BOARD AT THIS TIME HAS JURISDICTION TO MAKE THE DETERMINATION, THE REQUEST OF THE APPLICANT TO AMEND ITS APPLICATION TO NAME INDUSTRIAL & DOMESTIC PROTECTION COMPANY LIMITED AS THE RESPONDENT EMPLOYER IN THIS APPLICATION IS DENIED.

THIS PROCEEDING. ACCORDINGLY. IS TERMINATED."

11052-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA LOCAL 1250 (AFL-CIO) (CLC) (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"IN SUPPORT OF ITS APPLICATION FOR CERTIFICATION, THE APPLICANT, INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1250, HEREINAFTER REFERRED TO AS "LOCAL 1250", FILED INTER ALIA, 6 CERTIFICATES OF MEMBER-SHIP IN LOCAL 527 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS! UNION OF AMERICA, HEREINAFTER REFERRED TO AS "LOCAL 527". THESE CERTIFICATES CONTAIN AUTHORIZATION TO LOCAL 1250. THE APPLICANT, TO REPRESENT THE EMPLOYEE NAMED THEREIN AND TO ACT ON HIS BEHALF "REGARDING WAGES, HOURS OF LABOUR. OR ANY CONDITION OF EMPLOYMENT". THE QUESTION AS TO THE WEIGHT TO BE ACCORDED SUCH EVIDENCE WAS RAISED BY THE BOARD IN THE SWANSEA CONSTRUCTION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 645, WHERE, ALTHOUGH NO DECISION WAS REACHED ON THE MERITS. THE BOARD ANNOUNCED THAT IT INTENDED IN FUTURE CASES "TO SCRUTINIZE SUCH EVIDENCE WITH THE GREATEST OF CARE". IN THE PRESENT CASE, THE MEMBERSHIP POSITION OF THE APPLICANT QUA THE EMPLOYEES IN THE BARGAINING UNIT WAS SUCH THAT WITHOUT THESE 6 CERTIFICATES THE APPLICATION WOULD BE DISMISSED BECAUSE THE APPLICANT WOULD HAVE LESS THAN 45% OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS. IN THESE CIRCUMSTANCES THE CASE WAS LISTED FOR HEARING AT WHICH TIME THE PARTIES WERE AFFORDED FULL OPPORTUNITY TO ADDUCE EVIDENCE. CROSS-EXAMINE WITNESSES AND PRESENT ARGUMENT ON THE MATTER IN ISSUE.

It is clear from the evidence before us that the 6 EMPLOYEES, for whom certificates of membership in Local 527 were filed, are not members of Local 1250. The certificates

FILED ARE EVIDENCE ONLY THAT THE EMPLOYEES CONCERNED ARE MEMBERS OF LOCAL 527. THE FACT THAT THESE SAME CERTIFICATES AUTHORIZE LOCAL 1250 TO BARGAIN ON BEHALF OF THE SAID EMPLOYEES DOES NOT CONSTITUTE EVIDENCE THAT THESE EMPLOYEES ARE MEMBERS OF LOCAL 1250. SEE TAPLEN CONSTRUCTION LIMITED. NOVEMBER, 1965, BOARD FILE No. 10831-65-R. HOWEVER, IT IS ARGUED THAT ALL THE APPLICANT NEED SHOW IS THAT THESE 6 PERSONS ARE MEMBERS OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' Union, I.E., THE PARENT ORGANIZATION, HEREINAFTER REFERRED TO AS THE "INTERNATIONAL", BECAUSE BOARD POLICY "HAS LONG REGARDED MEMBERSHIP IN THE LOCAL AS MEMBERSHIP IN THE PARENT". REFERENCE WAS MADE TO THE COCHRANE-DUNLOP HARDWARE LIMITED CASE, (1963) 63 C.L.L.C. 916,268 AT P. 1135. THE APPLICANT REFERRED TO SECTION 7 OF THE LABOUR RELATIONS ACT WHICH PROVIDES THAT THE BOARD, BEFORE CERTIFYING A TRADE UNION OUTRIGHT OR BEFORE ORDERING A REPRESENTATION VOTE, MUST BE SATISFIED THAT A CERTAIN PERCENTAGE "OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION". THE APPLICANT SUBMITTED THAT THE UNDERLINED WORDS SHOULD BE INTERPRETED TO INCLUDE NOT ONLY THE APPLICANT TRADE UNION, NAMELY LOCAL 1250, BUT ITS PARENT ORGANIZATION AS WELL, THAT IS, THE INTERNATIONAL. IF THIS INTERPRETATION IS PLACED ON THESE WORDS THEN SO THE ARGUMENT GOES, IT WOULD FOLLOW THAT THE 6 CERTIFICATES OF MEMBERSHIP IN LOCAL 527 SHOULD BE COUNTED IN FAVOUR OF THE APPLICANT SINCE THE 6 PERSONS CONCERNED ARE MEMBERS OF THE AFOREMENTIONED INTERNATIONAL, THE PARENT ORGANIZATION OF LOCAL 527.

WE HAVE GIVEN CAREFUL CONSIDERATION TO THE ARGUMENTS ADVANCED IN SUPPORT OF THIS SUBMISSION. WE ARE NOT PERSUADED, HOWEVER. THAT THIS IS A CASE OF STRICT VERSUS LIBERAL INTERPRE-TATION OF STATUTORY PROVISION AS ARGUED BY COUNSEL FOR THE APPLICANT. IN OUR VIEW, THE WORDS "THE TRADE UNION", WHEN READ IN THE CONTEXT OF SECTIONS 5 TO 8 OF THE LABOUR RELATIONS ACT, PLAINLY AND CLEARLY REFER TO THE TRADE UNION APPLYING FOR CERTIFICATION, THAT IS, AN APPLICANT TRADE UNION. THIS VIEW IS IN ACCORD, APPARENTLY, WITH AN EARLIER VIEW OF THE BOARD. SEE STATEMENT OF POLICY, FEBRUARY 16, 1951, VOL 2, CANADIAN LABOUR LAW REPORTER, 960, 981. MOREOVER, THE BOARD HAS LONG TAKEN THE POSITION, AND THIS WAS NOT CHALLENGED BY COUNSEL FOR THE APPLI-CANT, THAT A LOCAL UNION AND ITS PARENT ORGANIZATION ARE SEPARATE ENTITIES. SEE THE METAL TEXTILES CASE, (1955) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 155-159, 916,016, C.L.S. 76-475. THUS LOCAL 1250, AND NOT THE INTERNATIONAL IS THE APPLI-CANT TRADE UNION IN THE PRESENT CASE AND IT FOLLOWS THEREFORE THAT UNDER THE PROVISIONS OF SECTION 7 THE BOARD IS CONCERNED WITH MEMBERSHIP IN LOCAL 1250. WE HAVE ALREADY FOUND THAT THE 6 PERSONS IN QUESTION ARE NOT MEMBERS OF THAT LOCAL.

WHILE WE RECOGNIZE THAT THIS DECISION MAY CAUSE SOME INCONVENIENCE TO SOME TRADE UNIONS BY REASON OF THEIR ORGANIZA-TIONAL STRUCTURES AND INTERNAL MANAGEMENT PRACTICES, IN VIEW OF THE NATURE OF THE MEMBERSHIP EVIDENCE REQUIRED BY THE BOARD, WE ARE NOT PERSUADED THAT THE DECISION PLACES ANY OBSTACLE IN THE PATH OF UNIONS APPLYING FOR CERTIFICATION.

HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS DISMISSED."

11125-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)

V. SHAW PIPE PROTECTION LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THERE WAS FILED WITH THE BOARD A DOCUMENT (HEREINAFTER REFERRED TO AS THE PETITION) WHICH IS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THIS APPLICATION. WHILE THE DOCUMENT WAS PREPARED BY JOHN CHAPPEL BOTH GEORGE DEAVU AND STANLEY ATKINSON ALSO WERE ORIGINATORS OF THE PETITION AND THE ABOVE-NAMED EMPLOYEES ARE THE FIRST THREE SIGNATURES THAT APPEAR ON THE PETITION. THE EVIDENCE REVEALS THAT GEORGE DEAVU IS THE BROTHER OF ONE OF THE FOREMEN IN THE EMPLOY OF THE RESPONDENT AND THAT STANLEY ATKINSON IS THE BROTHER-IN-LAW OF L. SHAW WHO IS THE PRESIDENT OF THE COMPANY. THESE FAMILY RELATIONSHIPS WERE COMMON KNOWLEDGE TO THE EMPLOYEES. CHAPPEL, DEAVUE AND ATKINSON TOGETHER APPROACHED MOST OF THE EMPLOYEES WHOSE SIGNATURES APPEAR ON THE PETITION AT THEIR HOMES AND SOUGHT THEIR SUPPORT FOR THE PETITION. (ONLY TWO EMPLOYEES WHOSE SIGNATURES APPEAR ON THE PETITION WERE NOT APPROACHED BY DEAVU AND CHAPPEL). THE EVIDENCE IS THAT THE EMPLOYEES WERE ASKED TO GIVE SHAW A CHANGE TO SETTLE ANY GRIEVANCES BEFORE TURNING TO THE UNION. ALSO, THE EMPLOYEES WERE TOLD THAT AN INCREASE IN WAGES WOULD BE FORTHCOMING IN FEBRUARY. HAVING REGARD TO ALL THE EVIDENCE RELATING TO THE CIRCUMSTANCES UNDER WHICH THE EMPLOYEES WERE ASKED TO SIGN THE PETITION. WE CONCLUDE THAT THE EMPLOYEES WERE APPREHENSIVE THAT THEIR SUPPORT OR NON-SUPPORT OF THE PETITION WOULD BECOME KNOWN TO MANAGEMENT AND WERE CONCERNED AS TO THE POSSIBLE CONSEQUENCE TO THEM OF THEIR FAILURE TO SUPPORT THE PETITION. WHEN ONE TAKES INTO ACCOUNT THE NATURAL DESIRE OF EMPLOYEES TO WANT TO IDENTIFY THEMSELVES WITH THE INTERESTS OF THEIR EMPLOYER WE ARE OF THE OPINION THAT THEY WERE SO INFLUENCED THAT WE CANNOT ACCEPT THE PETITION AS REPRESENTING A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT. ACCORDINGLY, WE FIND THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

BOARD MEMBER F. W. MURRAY DISSENTED AND SAID:-

<sup>&</sup>quot; | DISSENT.

AS REPRESENTING A TRUE EXPRESSION OF OPINION OF THE EMPLOYEES WHO SIGNED IT. THERE WAS NO EVIDENCE TO INDICATE THAT THE EMPLOYER, OR ANY REPRESENTATIVE OF THE EMPLOYER, MADE STATE—MENTS CONTAINING THREATS OR PROMISES TO ANY ONE OR GROUP OF EMPLOYEES, OR TOOK ANY PART IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE PETITION, OR DID ANY OTHER ACT OR MADE ANY UTTERANCES THAT SHOULD CAUSE THE BOARD TO CONCLUDE THAT THE PETITION WAS NOT A TRUE EXPRESSION OF THE EMPLOYEES! WISHES.

DEALING WITH THE EVIDENCE CONCERNING GEORGE DEAVU AND STANLEY ATKINSON, THERE IS NO EVIDENCE TO INDICATE THAT EITHER OF THESE PEOPLE EVER EXERCISED ANY MANAGERIAL AUTHORITY, NOR INDEED IS THERE A TITTLE OF EVIDENCE THAT EITHER OF THESE PERSONS EVER FUNCTIONED AS A REPRESENTATIVE OF THE EMPLOYER IN ANY WAY, NOR IS THERE EVIDENCE THAT THESE PERSONS EVER IN THE PAST MADE REPORTS TO MANAGEMENT CONCERNING THE WORK OR OTHER ACTIVITY OF THERE FELLOW EMPLOYEES. ON THE EVIDENCE BEFORE THE BOARD THESE TWO PERSONS HAD NO OTHER ROLE THAN THAT OF WORKMEN THE SAME AS OTHER WORKMEN IN THE BARGAINING UNIT. THE FACT THAT DEAVU IS A BROTHER OF ONE OF THE FOREMEN AND THAT ATKINSON IS A BROTHER-IN-LAW OF L. SHAW SHOULD NOT, IN MY OPINION, BE FATAL TO THE PETITION, UNLESS OF COURSE THE BOARD IS GOING TO INTEREST ITSELF IN WHAT IS IN THE MINDS OF EMPLOYEES OR EMPLOYERS.

IN MY OPINION, IT IS NOT THIS BOARD'S FUNCTION TO TRY TO ENTER THE MINDS OF EMPLOYEES OR INDEED EMPLOYERS IN AN EFFORT TO DETERMINE THAT THEIR OPINION IS OF AN INDIVIDUAL EMPLOYEE OR INDEED WHAT MOTIVATED THEIR SUPPORT OR NON-SUPPORT OF A UNION OR OF NO UNION, OR OF ONE UNION VIS A VIS ANOTHER UNION.

To suggest that employees do not have certain thoughts of suspicions at a time when they sign a document in support of one union or no union or in support of one union vis a vis another union is an insult to the intelligence of employees who, after all, do not live in a never-never land wherein they believe that their employer has absolutely no opinion whatsoever on these matters or that indeed some of there fellow employees may oppose being represented by a trade union. Many employees may feel that their employer is in opposition to a particular trade union, whether in fact he is or not. This is certainly not an unnatural suspicion, however, what the Board must deal with is fact, and in this case before the Board there is no evidence that the employer took any part in the origination, preparation or circulation of the petition, or indeed made any statements that would otherwise influence the employees.

THEREFORE I HAVE CONCLUDED THAT WHAT WAS IN THE MINDS OF SOME EMPLOYEES CONCERNING THE ROLE OF DEAVU AND/OR ATKINSON IS IRRELEVANT IN THE ABSENCE OF ANY EVIDENCE TO SUBSTANTIATE THESE OPINIONS.

I ACCORDINGLY ACCEPT THE PETITION AND IN VIEW OF THE EVIDENCE WOULD ORDER THAT A VOTE BE TAKEN."

#### INDEXED ENDORSEMENT - STRIKE UNLAWFUL

 $\frac{11096-65-U}{N}$ : The Hydro-Electric Power Commission of Ontario (Applicant) v. N. Barabash et al (Respondents). (GRANTED).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for declaration that a strike engaged in by employees of the applicant is unlawful.

IT IS AGREED THAT A STOPPAGE OF WORK IN WHICH EACH OF THE RESPONDENTS PARTICIPATED, TOOK PLACE WITH RESPECT TO CERTAIN OPERATIONS OF THE APPLICANT ON THE 10TH, 11TH, 12, 15TH, 16TH, 17TH, 18TH, AND 19 OF NOVEMBER, 1965. THIS STOPPAGE OF WORK TOOK PLACE DURING THE TERM OF A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE UNITED Association of Journeymen and Apprentices of the Plumbing AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA. WHICH IS A TRADE UNION AND IS THE BARGAINING AGENT FOR THE RESPONDENTS AND OTHER EMPLOYEES OF THE APPLICANT. ON MONDAY, THE 22ND OF NOVEMBER, 1965, THE RESPONDENTS RE-TURNED TO WORK AND HAVE SINCE REMAINED AT WORK. COUNSEL FOR THE RESPONDENTS URGES THAT. IN THESE CIRCUMSTANCES. WE SHOULD APPLY THE PRINCIPLES ENUNCIATED BY THE BOARD IN THE BALL BROTHERS LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 2955-1959, 416,091, IN WHICH THE BOARD, IN THE EXERCISE OF ITS DISCRETION, REFUSED TO MAKE THE DECLARATION THAT A STRIKE WAS UNLAWFUL, SINCE THE STRIKE HAD BEEN SETTLED BEFORE THE APPLICATION HAS COME ON FOR HEARING. IN THE BALL BROTHERS CASE, HOWEVER, THE BOARD REFERRED TO CERTAIN SITUATIONS IN WHICH A DECLARATION MIGHT WELL BE ISSUED, EVEN THOUGH THE APPLICATION HAD COME ON FOR HEARING AFTERTHE STRIKE HAD BEEN SETTLED. THESE IN-CLUDE THE FOLLOWING:-

- (1) WHERE A UNION HAS CALLED A NUMBER OF UNLAWFUL STRIKES AS PART OF A GENERAL PATTERN FOR GAINING ITS OBJECTIVES IN DEFIANCE OF THE LAW;
- (2) WHERE, ALTHOUGH THE PARTICULAR UNLAWFUL STRIKE
  WHICH PROVIDED THE OCCASION FOR AN APPLICATION
  HAS BEEN SETTLED, THE EMPLOYER AFFECTED THEREBY
  HAS A REASONABLE FEAR THAT HIS OPERATIONS WILL
  AGAIN BE INTERRUPTED IN SIMILAR FASHION.

IT WAS URGED ON BEHALF OF THE APPLICANT IN THE INSTANT CASE THAT (1) A NUMBER OF UNLAWFUL STRIKES HAVE BEEN CALLED BY THE UNION OF WHICH THE RESPONDENTS ARE MEMBERS; (2) THE EMPLOYER DOES HAVE A REASONABLE FEAR THAT SUCH STRIKES WILL RECUR; AND (3) THAT THE STRIKE CANNOT BE SAID TO HAVE BEEN "SETTLED" IN ANY EVENT. FOR ANY OR ALL OF THESE REASONS IT IS URGED THAT THE BOARD SHOULD ISSUE THE DECLARATION. THESE ARGUMENTS WILL BE DEALT WITH SERIATIM.

FIRST. THE EVIDENCE ESTABLISHES THAT DURING THE TERM OF THE COLLECTIVE AGREEMENT THERE HAVE BEEN A NUMBER OF UNLAWFUL STRIKES CALLED OR AUTHORIZED BY THE TRADE UNION OF WHICH THE RESPONDENTS ARE MEMBERS. OR ENGAGED IN BY MEMBERS OF THE BAR-GAINING UNIT IN WHICH THE RESPONDENTS ARE EMPLOYED. IN SOME CASES THESE UNLAWFUL STRIKES INVOLVED EMPLOYEES OF THE APPLICANT AT ITS LAKEVIEW GENERATING STATION, WHICH IS THE LOCATION AT WHICH WHICH THE RESPONDENTS ARE EMPLOYED. THERE WAS NO EVIDENCE, HOW-EVER, THAT ANY OF THE RESPONDENTS HAD THEMSELVES PREVIOUSLY ENGAGED IN AN UNLAWFUL STRIKE. COUNSEL FOR THE RESPONDENTS THERE-FORE URGED THAT THE EVIDENCE OF A "PATTERN" OF UNLAWFUL STRIKES OUGHT NOT TO BE CONSIDERED AS AGAINST THE RESPONDENTS. THIS EVIDENCE CERTAINLY COULD NOT BE USED AS EVIDENCE OF "SIMILAR ACT" IF THE QUESTION BEFORE THE BOARD WERE THE QUESTION WHETHER THE RESPONDENTS HAD ENGAGED IN AN UNLAWFUL STRIKE. HOWEVER, THE BOARD FINDS ON OTHER EVIDENCE THAT THE RESPONDENTS DID ENGAGE IN AN UNLAWFUL STRIKE, AND THE QUESTION TO WHICH THE EVIDENCE OF A PATTERN OF UNLAWFUL STRIKES WOULD BE RELEVANT IS THE QUESTION OF THE BOARD'S DESCRETION IN ISSUING A DECLARATION. THERE IS NO DOUBT THAT THE RESPONDENTS HAVE VIOLATED SECTION 54 OF THE LABOUR RELATIONS ACT. THE QUESTION THEN IS WHETHER, IN THE CIRCUMSTANCES, A PRONOUNCEMENT TO THAT EFFECT BY THE BOARD IS WARRANTED OR DESIRABLE. THESE CIRCUMSTANCES INCLUDE THE HISTORY OF THE RELATIONSHIP BETWEEN THE EMPLOYER, ITS EMPLOYEES AND THE TRADE UNION. THE RESPONDENTS ARE AFFECTED BY THAT HISTORY, WHETHER THEY PLAYED ANY ROLE IN ITS MAKING OR NOT. IN THE WESTERN TIRE AND AUTO SUPPLY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, 916,134, THE BOARD STATED AS FOLLOWS :-

ALTHOUGH THE CASE REFERRED TO DEALS WITH A SITUATION WHERE A TRADE UNION CALLS OR AUTHORIZES AN UNLAWFUL STRIKE, THE SAME PRINCIPLES ARE APPLICABLE WHERE EMPLOYEES ENGAGE IN A STRIKE. WHERE THE BASIS FOR THE RELIEF SOUGHT IS THE FACT THAT THE TRADE UNION CALLED OR AUTHORIZED A STRIKE, THE PATTERN OF UNLAWFUL CONDUCT FOR WHICH THE BOARD WOULD HAVE REGARD. AS BRINGING A CASE WITHIN THE FIRST EXCEPTION TO THE GENERAL RULE SET OUT IN THE BALL BROTHERS CASE, WOULD BE THE REPETITION OF THE UNLAWFUL CONDUCT BY THE SAME UNION. WHERE THE BASIS FOR THE RELIEF SOUGHT IS THE FACT THAT EMPLOYEES ENGAGED IN AN UNLAWFUL STRIKE. THE PATTERN IS PRESENT IN THE REPETITION OF THE UNLAWFUL CONDUCT BY EMPLOYEES, EVEN THOUGH THE GROUP OR BODY OF EMPLOYEES THAT ENGAGED IN THE UNLAWFUL CONDUCT IS SOMEWHAT DIFFERENTLY CONSTITUTED IN EACH OF THE SEVERAL INSTANCES THAT ARE BROUGHT TO THE BOARD'S ATTENTION. IT IS NOT NECESSARY TO SHOW THAT THE VERY SAME EMPLOYEES ENGAGED IN THE STRIKE IN EACH INSTANCE, SINCE ANY DECLARATION THAT THE BOARD MAY ISSUE IN SUCH CIRCUMSTANCES IS A DECLARATION THAT THE EMPLOYEES ENGAGED IN THE UNLAWFUL STRIKE WHICH CONSTITUTES THE OCCASION FOR THE INSTITUTION OF THE PROCEEDING.

STRIKES THAT OCCURRED PREVIOUSLY ARE IN A SENSE THE ELEMENTS OF AGGRAVATION THAT THE BOARD TAKES INTO ACCOUNT IN DETERMINING HOW IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 59.

In that case a declaration was issued, although the employees concerned had not all previously engaged in illegal strikes. It is our opinion that the reasoning of the Western Tire Case is applicable in the circumstances of the instant case. It may be noted as well that in the Falconbridge Nickel Mines Case, 1960 C.L.C., \$\pi\16,180\$, where the employees in one of the applicants' operations engaged in an unlawful strike, the Board, in considering its discretion, had regard to evidence of previous unlawful strikes at other operations of the applicant's, where different employees were involved. The Board found a community of interest running through the whole of the applicant's operations, the employees in each operation being within the same bargaining unit and subject to the same collective agreement. The Board considered that the principles enunciated in the Western Tire Case were applicable in the Falconbridge Case as well.

SECOND, THE EVIDENCE IS THAT THE UNLAWFUL STRIKE ENGAGED IN BY THE RESPONDENTS LASTED FOR A TOTAL OF EIGHT WORKING DAYS. NO REASON FOR THE STRIKE WAS EVER AFFORDED TO THE APPLICANT. ALTHOUGH THE RESPONDENTS HAVE NOW RETURNED TO WORK, THE APPLICANT ARGUES AND THE BOARD AGREES THAT, IN THESE CIRCUMSTANCES, AND PARTICULARLY IN THE LIGHT OF THE NUMEROUS UNLAWFUL STRIKES WHICH HAVE TAKEN PLACE DURING THE TERM OF THE COLLECTIVE AGREEMENT, THE APPLICANT MAY BE SAID TO HAVE A REASONABLE FEAR THAT HIS OPERATIONS MAY AGAIN BE INTERRUPTED.

Third, since it appears there has in fact been no resolution of any of the issues which lead to the unlawful strike and since, indeed, the applicant has not even been apprised of what those issues were, it can hardly be said that the return to work by the respondents constitutes a "settlement" of the strike. That the mere return to work by striking employees does not necessarily constitute a "settlement", as that term was used in the Ball Brothers Case, was made clear by the Board in the McNamara-Raymond Case, 1961 C.L.L.C., ¶16,192, and in other cases there cited.

FOR ALL OF THE FOREGOING REASONS, WE ARE OF OPINION THAT THIS IS A CASE IN WHICH THE BOARD OUGHT TO ISSUE A DECLARATION THAT THE STRIKE ENGAGED IN BY THE RESPONDENTS, EMPLOYEES OF THE APPLICANT, WAS, AS WE HAVE FOUND, UNLAWFUL.

THE BOARD DECLARES THAT THE ACTION OF THE RESPONDENTS IN FAILING TO REPORT FOR WORK ON NOVEMBER 10TH, 11TH, 12TH, 15TH, 16TH, 17TH, 18TH AND 19TH, 1965, CONSTITUTED A STRIKE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND THAT THE SAID STRIKE WAS UNLAWFUL."

#### INDEXED ENDORSEMENT - PROSECUTION

11009-65-U: WESTERN FREIGHT LINES LIMITED (APPLICANT) V. ANDREW (ANDY) POLAND (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is an application for consent to the institution of a prosecution against the respondent for the alleged violation of section 55 of The Labour Relations Act. The applicant alleges that on Thursday, October 28th, 1965, at Chatham, the respondent did unlawfully call, counsel, procure, support or encourage an unlawful strike.

THE EVIDENCE BEFORE THE BOARD IS AS FOLLOWS: THAT THE RESPONDENT IS VICE-PRESIDENT AND LOCAL BUSINESS AGENT OF THE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 880; THAT IN THAT CAPACITY HE HAS SOUGHT THE CO-OPERATION OF THE APPLICANT AS WELL AS OTHER EMPLOYERS IN A REFUSAL TO HANDLE THE GOODS OF ANOTHER EMPLOYER WHOSE EMPLOYEES ARE ENGAGED IN A STRIKE: THAT THE EMPLOYEES OF THE APPLICANT, MEMBERS OF LOCAL 880. DO NOT WISH TO HANDLE THE GOODS REFERRED TO: THAT THE RESPONDENT ATTENDED A MEETING WITH OFFICIALS OF THE APPLICANT ON THE EVENING OF THURSDAY. OCTOBER 28TH: THAT DURING AND FOLLOWING THAT MEETING THE APPLICANT S EMPLOYEES CONTINUED TO WORK AND TO HANDLE THE GOODS IN QUESTION; THAT ON FRIDAY, OCTOBER 29TH, THERE WAS AN ILLEGAL STRIKE ENGAGED IN BY EMPLOY-EES OF THE APPLICANT: THAT THE RESPONDENT ADVISED THE EMPLOYEES TO RETURN TO WORK; THAT CERTAIN EMPLOYEES EXPRESSED THEIR UN-WILLINGNESS TO BE GUIDED BY THE ADVICE OF THE RESPONDENT; THAT THE EMPLOYEES DID RETURN TO WORK ON MONDAY. NOVEMBER 1ST AND THAT FROM TIME TO TIME THE RESPONDENT HAS EXPRESSED HIS PERSONAL OPINION THAT UNION MEMBERS OUGHT NOT TO HANDLE THE GOODS IN QUESTION.

THE ONLY REAL EVIDENCE IN SUPPORT OF THE ALLEGATION IS THAT LAST MENTIONED. THERE IS NO DOUBT THAT THE RESPONDENT DESIRED THE APPLICANT AS WELL AS OTHER EMPLOYERS TO REFUSE TO HANDLE THE GOODS IN QUESTION. THE ISSUE, HOWEVER, IS WHETHER HE CALLED. COUNSELLED. PROCURED, SUPPORTED OR ENCOURAGED THE STRIKE WHICH, IN FACT, TOOK PLACE AMONG THE EMPLOYEES OF THE RESPONDENT. ALTHOUGH OTHER ISSUES MAY WELL ARISE FROM THE FACTS DESCRIBED NO SUCH OTHER ISSUE IS BEFORE THIS BOARD. THE EVI-DENCE IS THAT THE RESPONDENT S EFFORTS WERE DIRECTED TOWARD OBTAINING THE CO-OPERATION OF THE EMPLOYER IN REFUSING TO HANDLE CERTAIN GOODS AND THAT HE DID NOT INTEND OR WORK TOWARD ANY CESSATION OF WORK BY EMPLOYEES WITHOUT THE CONCURRENCE OF THE EMPLOYER. THE EVIDENCE IS CLEAR THAT FOLLOWING THE MEETING BETWEEN THE RESPONDENT AND OFFICERS OF THE APPLICANT THE RESPONDENT URGED THE EMPLOYEES OF THE APPLICANT TO CONTINUE TO WORK AND, IN PARTICULAR, TO HANDLE THE GOODS IN QUESTION. THIS WAS DONE. ON THE FOLLOWING MORNING THE NEXT SHIFT OF EMPLOYEES FAILED TO REPORT FOR WORK AND ENGAGED IN AN UNLAWFUL STRIKE. THERE

IS NO EVIDENCE THAT THE RESPONDENT CALLED COUNSELLED, PROCURED OR SUPPORTED THIS STRIKE. THERE IS SOME EVIDENCE THAT THE RESPONDENT HAD DIFFICULTY IN CONTROLLING THE ACTIONS OF THIS GROUP OF EMPLOYEES ALTHOUGH ON THEIR NEXT REGULAR SHIFT AND ON THE ADVICE OF THE RESPONDENT THEY RETURNED TO WORK.

IN THE OPINION OF THE BOARD, THE APPLICANT HAS FAILED TO SATISFY THE ONUS UPON IT TO ESTABLISH A PRIMA FACIE CASE IN SUPPORT OF ITS ALLEGATIONS AND THE APPLICATION IS ACCORDINGLY DISMISSED."

BOARD MEMBER H. F. IRWIN DISSENTED AND SAID:-

" | DISSENT.

THE EVIDENCE IS CLEAR THAT THE RESPONDENT, ANDY POLAND, HAS FROM TIME TO TIME EXPRESSED HIS PERSONAL OPINION THAT UNION MEMBERS OUGHT NOT TO HANDLE THE GOODS IN QUESTION. HE TOLD THE EMPLOYEES THAT HE PERSONALLY WOULD NOT HANDLE GOODS MADE BY "SCABS". HE REQUESTED THE COMPANY NOT TO HANDLE THE GOODS. POLAND IS THE VICE-PRESIDENT AND BUSINESS AGENT OF LOCAL UNION 880. CONSEQUENTLY, HIS ACTIONS AND WORDS NATURALLY CARRY GREAT WEIGHT AND INFLUENCE WITH THE UNION MEMBERS. WHILE THERE IS NO EVIDENCE THAT HE PERSONALLY INSTRUCTED THE MEN NOT TO HANDLE "HOT GOODS", BY MAKING THE ABOVE STATEMENTS HE LEFT NO DOUBT WHAT HE WOULD LIKE THE MEN TO DO. HE ACCOMPLISHED INDIRECTLY THE VERY THINGS THAT SECTION 55 OF THE ACT PREVENTS HIM FROM DOING DIRECTLY, NAMELY, TO ENCOURAGE AN UNLAWFUL STRIKE.

IN ADDITION, POLAND WAS A MOST UNSATISFACTORY AND EVASIVE WITNESS. PART OF HIS EVIDENCE IS IN DIRECT CONFLICT WITH THAT GIVEN BY R. GRANT SCHIVES, SECRETARY-TREASURER AND PERSONNEL DIRECTOR OF THE APPLICANT COMPANY. | ACCEPT SCHIVES! EVIDENCE WHICH WAS GIVEN IN A STRAIGHTFORWARD AND CANDID MANNER.

IN MY OPINION, THERE IS SUFFICIENT EVIDENCE TO WARRANT GRANTING LEAVE TO PROSECUTE POLAND FOR ENCOURAGING AN UNLAWFUL STRIKE CONTRARY TO SECTION 55 OF THE ACT AND I WOULD HAVE DONE SO."

## INDEXED ENDORSEMENTS - SECTION 65

10535-65-U: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (COMPLAINANT) v. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This complaint is brought on behalf of two aggrieved persons, Thomas Gray and Ronald Simmons, whose employment the complainant alleges was terminated contrary to section 59(1) of the Labour Relations Act.

FOLLOWING ITS CERTIFICATION AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF THE RESPONDENT'S STATIONARY ENGINEERS, THE COMPLAINANT UNION, PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT, SERVED NOTICE TO BARGAIN ON THE RESPONDENT WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. A NUMBER OF MEETINGS THEN TOOK PLACE, COMMENCING ON OR ABOUT MARCH 26TH, 1965, BETWEEN OFFICERS OF THE UNION AND OF THE RESPONDENT COMPANY CONCERNING THE NEGOTIATION OF A COLLECTIVE AGREEMENT. THE LAST MEETING PRIOR TO THE HEARING OF THE COMPLAINT HEREIN TOOK PLACE ON OR ABOUT AUGUST 13TH, 1965.

ON OR ABOUT APRIL 8TH. 1965. THE COMPANY GAVE TO THE TWO AGGRIEVED PERSONS WHO WERE EMPLOYED AS STATIONARY ENGINEERS, NOTICE OF THE FACT THAT THEY WERE TO BE LAID OFF. AS THEY WERE, ON APRIL 30TH, 1965. THE REASON GIVEN BY THE COMPANY FOR TERMINATING THE EMPLOYMENT OF THESE TWO ENGIN-EERS WAS THAT THE HEATING SEASON WAS OVER AND THERE WAS NOT SUFFICIENT WORK TO KEEP ALL THE ENGINEERS ENGAGED THROUGH THE SUMMER MONTHS. ACCORDING TO THE EVIDENCE. THE COMPANY HAD MAINTAINED IN ITS EMPLOY DURING THE HEATING SEASON AND SUMMER MONTHS THROUGHOUT THE PAST TWO YEARS A COMPLEMENT OF SOME FOUR STATIONARY ENGINEERS. IT WAS EXPLAINED BY GRAY THAT HE WAS TOLD WHEN HE WAS LAID OFF THAT THE COMPANY INTENDED TO RE-EMPLOY HIM AT THE COMMENCEMENT OF THE HEAT-ING SEASON. WHILE SIMMONS, IN HIS EVIDENCE, DID NOT MAKE AN EXPLICIT STATEMENT TO THE EFFECT THAT HE WAS ALSO TOLD THAT HE WOULD BE RECALLED IN THE FALL, WE TAKE IT FROM HIS EVIDENCE THAT THIS WAS HIS UNDERSTANDING OF THE MATTER. ALTHOUGH THE TERMINATION OF THE EMPLOYMENT OF THE TWO AGGRIEVED EMPLOYEES IS DESCRIBED AS A "LAY-OFF", THERE IS NO EVIDENCE THAT THE COMPANY UNDERTOOK CONTRACTUALLY TO RE-EMPLOY THESE TWO PERSONS IN THE FALL. THERE IS NO DOUBT, OF COURSE, THAT IN ORDER TO MAINTAIN PLEASANTRIES THE WORDS "LAYOFF" ARE OFTEN USED BY AN EMPLOYER INTER-CHANGEABLY WITH AND AS A EUPHEMISM FOR DISCHARGE. IT WOULD APPEAR THAT THE COMPANY'S USE OF THE WORDS 'LAY-OFF' TO DESCRIBED ITS ACTION IN TERMINATING THE EMPLOYMENT OF THE TWO EMPLOYEES IN THIS CASE WAS TO DENOTE AN INTENTION ON THE PART OF THE COMPANY TO RE-EMPLOY THEM AT THE COMMENCE-MENT OF THE HEATING SEASON.

WHEN THE TWO EMPLOYEES WERE INTERVIEWED WITH RESPECT TO THEIR APPLICATIONS FOR EMPLOYMENT WITH THE COMPANY, THEY INDICATED TO THE COMPANY THAT THEY WERE SEEKING PERMANENT EMPLOYMENT. THEY WERE TOLD BY MR. NEWTON, THE OFFICIAL OF THE COMPANY WHO HIRED THEM THAT FOR THE PAST TWO YEARS THE AMOUNT OF MAINTENANCE AND OTHER WORK AVAILABLE FOR THE ENGINEERS HAD BEEN SUCH THAT THE COMPANY HAD NOT FOUND IT NECESSARY TO LAY OFF ANY OF THE FOUR ENGINEERS DURING THE SUMMER MONTHS. IT IS APPARENT, FROM WHAT THEY WERE TOLD ABOUT THE SITUATION IN THE PREVIOUS TWO YEARS, THEREFORE, THAT THESE ENGINEERS WERE GIVEN GROUNDS TO BELIEVE, AT THE TIME OF THEIR HIRING, THAT THE PROSPECTS WERE GOOD FOR THE CONTINUANCE OF THEIR JOBS WITH THE COMPANY ON A YEAR-ROUND BASIS. THIS NO DOUBT FORMED SOME PART OF THE INDUCEMENT WHICH CAUSED THEM

TO ACCEPT SERVICE WITH THE COMPANY. WE ARE CONSTRAINED TO INFER, HOWEVER, THAT WHILE THE COMPANY HELD OUT THE PROSPECT OF YEAR-ROUND EMPLOYMENT, THE CONTINGENCY TO LAY-OFF IN THE SUMMER MONTHS WAS MADE KNOWN TO AND ACCEPTED BY THE TWO EMPLOYEES AS A TERM OR CONDITION OF THEIR EMPLOYMENT. THE JOB DESCRIPTIONS OF THE ENGINEERING STAFF AS ISSUED BY THE COMPANY INCLUDES SUCH WORK AS:- SERVICING ANDMAINTENANCE OF ELECTRICAL, PLUMBING, SPRINKLER VENTILATION, AND AIR CONDITIONING EQUIPMENT; MAINTENANCE OF GROUNDS LAWNS, SHRUBS, PARKING LOTS; BUILDING SECURITY, COLLECTION AND DISPOSAL OF TRASH FROM WAREHOUSE, GROUNDS AND OFFICE; AND THE MAINTENANCE OF THE COOLING SYSTEM IN THE BUILDING.

ACCORDING TO THE TWO EMPLOYEES. NEWTON INFORMED THEM THAT THEY WERE BEING LAID OFF BECAUSE THER WAS NOT SUFFICIENT MAINTENANCE WORK AVAILABLE, AS THERE HAD BEEN IN THE TWO PREVIOUS YEARS, TO KEEP ALL THE ENGINEERS EMPLOYED DURING THE SUMMER MONTHS. SIMMONS TESTIFIED THAT HE AND GRAY TALKED TO THE CHIEF ENGINEER KERRID ABOUT THE REASONS WHY THEY WERE BEING LAID OFF AND ASKED HIM WHO WOULD BE DOING THEIR WORK. ACCORDING TO THEM. KERRID REPLY THAT "THE WORK" WAS TO BE "FARMED OUT". IN DISCUSSING WHAT WORK WOULD BE "FARMED OUT" KERRID MENTIONED THAT THE COMPANY WOULD BE HIRING HIGH SCHOOL STUDENTS TO LOOK AFTER THE GROUNDS AND CUT THE GRASS: AND THAT THE JOB OF ERECTING THE AWNING AROUND THE BUILDING WOULD BE CONTRACTED OUT. SOME TWO WEEKS AFTER HIS LAY-OFF, GRAY SAYS HE RETURNED TO THE PLANT AND OB-SERVED ONE OF THE TWO ENGINEERS WHO REMAINED ON THE JOB PAINTING. ON BEING QUESTIONED ABOUT THE LENGTH OF TIME REQUIRED TO ERECT THE AWNING, GRAY REPLIED THAT THE JOB COULD BE DONE IN ONE DAY.

IN THE PRESENT CASE THERE IS NO ALLEGATION, NOR DOES THE EVIDENCE INDICATE THAT THERE WAS ANY ALTERATION OF TERMS OR CONDISTIONS OF EMPLOYMENT RELATING TO SENIORITY OR SEQUENCE OF LAY-OFF. FURTHER, THERE IS NO SUGGESTION OR EVIDENCE THAT THE AGGRIEVED EMPLOYEES WERE LAID OFF BECAUSE OF UNION ACTIVITIES OR BECAUSE THEY WERE EXERCISING ANY RIGHTS UNDER THE LABOUR RELATIONS ACT.

THE UNION WAS NOT CONSULTED NOR DID IT AT ANY TIME ASSENT TO THE TWO AGGRIEVED PERSONS BEING LAID OFF.

It is the contention of the complainant that the action of the company in terminating the employment of the two employmens at the time, and in the manner in which it did, amounts to an alteration of their terms or conditions of employment, without the consent of the union and is, therefore, in contravention of the provisions of section 59(1) of the Labour Relations act. On this basis, the complainant claims to be entitled to invoke,

FOR THE BENEFIT OF THE AGGRIEVED EMPLOYEES, THE REMEDIES
OF REINSTATEMENT AND COMPENSATION AFFORDED BY SECTION 65
OF THE ACT.

IN SUPPORT OF ITS CONTENTION THAT THERE WAS WORK WHICH COULD HAVE BEEN GIVEN TO THE TWO EMPLOYEES IN QUESTION TO KEEP THEM EMPLOYED THROUGHOUT THE SUMMER, THE COMPLAINANT RELIES ON THE CONTENTS OF THE CONVERSATION WHICH THE TWO AGGRIEVED PERSONS REPORT THEY HAD WITH KERRID, THE CHIEF ENGINEER. WHAT THE TWO AGGRIEVED EMPLOYEES SAY WAS SAID TO THEM BY KERRID MAY, OF COURSE, IN SO FAR AS IT GOES, BE TAKEN AS HAVING PROBATIVE VALUE AS AN ADMISSION BY A COMPANY OFFICIAL AGAINST THE INTERESTS OF THE COMPANY. THE EVIDENTIARY VALUE OF WHAT KERRID IS REPORTED TO HAVE SAID, HOWEVER, MUST BE WEIGHED AND ASSESSED IN TERMS OF THE CREDIBILITY OF THE TWO AGGRIEVED PERSONS. ON THE BASIS OF THEIR REPORT OF THE CONVERSATION, HOWEVER, THERE IS ON THE FACE OF IT MUCH AMBIGUITY IN WHAT KERRID MEANT WHEN HE SAID THAT THE WORK WOULD BE "FARMED OUT" . HAVING REGARD TO OUR ASSESSMENT OF THE EVIDENCE, WE ARE NOT PREPARED TO FIND THAT KERRID'S STATE-MENT TO THE TWO EMPLOYEES WAS TO THE EFFECT, AS THE COMPLAINANT S COUNSEL WOULD HAVE US FIND, THAT THEY WERE BEING LAID OFF BECAUSE THEIR WORK WAS BEING CONTRACTED OUT TO OTHERS. IN OUR OPINION, WHILE THERE IS SOME EVIDENCE THAT CERTAIN WORK WAS BEING CON-TRACTED OUT, THE WORK DESCRIBED AS BEING CONTRACTED OUT WAS NEGLIGIBLE IN PROPORTION TO THE AMOUNT OF WORK WHICH WOULD HAVE BEEN NECESSARY TO EMPLOY THE TWO AGGRIEVED PERSONS DURING THE SUMMER MONTHS.

IN OUR VIEW, HAVING REGARD TO THE LANGUAGE AND OBVIOUS INTENT OF THE SECTION, THERE IS NO DOUBT THAT IN A PROPER CASE THE REMEDIAL PROVISIONS OF SECTION 65 ARE AVAILABLE TO REDRESS GRIEVANCES OF EMPLOYEES WHOSE TERMS OR CONDITIONS OF EMPLOYMENT, AFTER SERVICE OF A NOTICE TO BARGAIN UNDER SECTION 11, ARE ALTERED WITHOUT THE CONSENT OF THE UNION, CONTRARY TO SECTION 59 OF THE ACT. THE QUESTION FOR DETERMINATION IN THE INSTANT CASE, THEREFORE, IS WHETHER OR NOT THERE HAS IN FACT BEEN ANY ALTERATION OF "RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT" OF THE EMPLOYEES CONCERNED AS CONTEMPLATED BY THE SECTION.

AN IMPORTANT QUESTION WHICH ARISES IN THIS PROCEEDING RELATES TO THE SCOPE AND MEANING OF THE WORDS "ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES". IN OUR OPINION, IT IS MANIFEST THAT THE AIM AND POLICY OF THIS SECTION IS DIRECTED TO THE PROTECTION OF THE UNION'S BARGAINING RIGHTS AND THE PROMOTION OF EFFECTIVE AND MEANINGFUL COLLECTIVE BARGAINING. ONCE THE NOTICE TO BARGAIN IS GIVEN, THE SECTION OPERATES TO PROHIBIT ALL ALTERATIONS WITHOUT THE UNION'S CONSENT, WHETHER THEY BE BENEFICIAL OR DETRIMENTAL TO THE EMPLOYEES CONCERNED, OF THEIR WAGES OR OTHER TERMS OR CONDITIONS OF EMPLOYMENT, INCLUDING ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER. THE SECTION SEEKS TO PROTECT THE UNION'S BARGAINING RIGHTS AND TO PROMOTE EFFECTIVE COLLECTIVE BARGAINING BY PRESERVING AND MAINTAINING THE UNION'S BARGAINING

POSITION FOR THE PERIOD STIPULATED, ON THE BASIS OF THE CONTRACTS OF EMPLOYMENT EXISTING BETWEEN THE EMPLOYER AND THE EMPLOYEES ON THE DATE OF THE NOTICE. IN OTHER WORDS. THE LEGISLATION IS DIRECTED AT MAINTAINING THE STATUS QUO OF THE WAGES AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT EXISTING UNDER THE CONTRACTS OF EMPLOYMENT BETWEEN THE EMPLOYEES AND THEIR EMPLOYER. DURING THE PARTICULAR PERIOD OF TIME STIPULATED IN THE SECTION. THE UNION IS. THEREFORE. GIVEN THE OPPORTUNITY, DURING THIS TIME, TO ENTER UPON NEGOTIATIONS AND TO BARGAIN FOR A COLLECTIVE AGREEMENT. HAVING REGARD TO A FIXED POINT OF DEPARTURE, NAMELY THE WAGES AND WORKING CONDITIONS EXISTING AT THE TIME OF THE NOTICE. IN THIS RESPECT THE UNION'S BARGAINING DURING THIS STIPULATED PERIOD WILL NOT BE UNDERMINED NOR WILL IT BE REQUIRED TO KEEP PACE WITH AND ALTER ITS POSITION IN ACCORDANCE WITH CHANGES IN TERMS OR CONDITIONS OF EMPLOY-MENT WHICH MIGHT OTHER WISE BE MADE AS A RESULT OF THE EMPLOYER BEING AT LIBERTY TO DEAL DIRECTLY WITH THE EMPLOYEES. IT WILL BE NOTED THAT THE SECTION ALSO GIVES SIMILAR PROTECTION TO THE BARGAINING POSITION OF THE EMPLOYER.

IT IS ABUNDANTLY PLAIN THAT IN THE ABSENCE OF ANY CUSTON OR A STIPULATION THEREIN TO THE CONTRACT OF SERVICE IS, AT COMMON LAW, TERMINABLE, WITHOUT CAUSE, BY EITHER THE EMPLOYEE OR THE EMPLOYER GIVING TO THE OTHER REASONABLE NOTICE. (SEE TRACEY V. SWANSEA CONSTRUCTION CO. LTD., (1965) 47 D.L.R. (2D) 295; HALSBURY'S LAWS OF ENGLAND, 3RD ED., VOL. 25, P. 490; GOULD V. MCCRAE, (1907) 14 O.L.R. 194; MESSER V. BARRETT CO. LTD., [1927] 1 D.L.R. 284; CARTER V. BELL & SONS (CANADA) LTD., [1936] O.R. 290; EMLER V. DISPLAY FIXTURES LTD., [1953] 2 D.L.R. 450). ALSO AT COMMON LAW, OF COURSE, A CONTRACT OF SERVICE IS TERMINABLE BY EITHER THE EMPLOYEE OR THE EMPLOYER FOR CAUSE WITHOUT NOTICE, (SEE TRACEY V. SWANSEA CONSTRUCTION CO. LTD. IBID), OR IS TERMINABLE IN ACCORDNACE WITH THE PROVISIONS OF THE CONTRACT ITSELF. DOES THE EXERCISE OF A CONTRACTUAL RIGHT OF TERMINATION AFTER SERVICE OF NOTICE TO BARGAIN CONSTITUTE AN ALTERATION OF A "TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES" CONTRARY TO THE SECTION? ARE THESE TERMS AS USED IN THE SECTION INTENDED TO BE CO-EXTENSIVE WITH THE CONTRACTUAL TERMS OR CONDITIONS OF EMPLOYMENT OR ANY RIGHTS, PRIVILEGES OR DUTIES EXISTING UNDER THE CONTRACT OF EMPLOY-MENT OR ARE THEY ROADER SO AS TO ENCOMPASS AND RECOGNIZE "RIGHTS", "PRIVILEGES" AND "DUTIES" OF THE PARTIES WHICH WOULD NOT FALL STRICTLY WITHIN THE CONTRACT? IN THE ABSENCE OF PLAIN AND INEXORABLE WORDS TO THE CONTRARY, WE ARE CONSTRAINED TO INTERPRET THE SECTION AS PRESERVING AT LEAST THE TERMS OR CONDITIONS OF EMPLOYMENT, AND THE RIGHTS, DUTIES AND PRIVILEGES IN EXISTENCE UNDER AND BY VIRTUE OF THE INDIVIDUAL CONTRACTS OF EMPLOYMENT WITH THE EMPLOYEES AT THE TIME OF THE GIVING OF THE NOTICE TO BARGAIN. IN CONSEQUENCE, IT IS OUR OPINION, THEREFORE, THAT IT WOULD

NOT BE AN ALTERATION OF ANY OF THE TERMS OR CONDITIONS
OF EMPLOYMENT OR THE DUTIES OR PRIVILEGES AS CONTEMPLATED
BY THE SECTION FOR THE EMPLOYER, IN THE INSTANT CASE, TO
LAY OFF (IN WHATEVER SENSE THOSE WORDS ARE USED) THE TWO
EMPLOYEES IN ACCORDANCE WITH THE TERMS OF THEIR CONTRACT
OF HIRING.

IN THE INSTANT CASE THE EMPLOYER GAVE NOTICE TO THE EMPLOYEES ON APRIL 8TH, THAT THEY WOULD BE LAID OFF, AS THEY WERE, ON APRIL 30TH. ON THE BASIS OF THE EVIDENCE PRESENTED WE ARE CONSTRAINED TO FIND THAT THESE EMPLOYEES WERE WORKING ON A WEEKLY OR FORTNIGHTLY HIRING PERIOD AND THAT THEY RECEIVED REASONABLE ADVANCE NOTICE OF THE TERMINATION OF THEIR EMPLOYMENT. IN THE CIRCUMSTANCES, WE ARE DRIVEN TO CONCLUDE, HOWEVER, THAT WHATEVER RIGHTS, IF ANY, THE EMPLOYER MAY OR MAY NOT HAVE UNDER THE SECTION TO TERMINATE THEIR EMPLOYMENT ON THE GROUNDS OF REASONABLE NOTICE ONLY, (AND IT IS UNNECESSARY FOR US TO REACH ANY CONCLUSION ONE WAY OR THE OTHER WITH RESPECT TO THIS QUESTION), THE NOTICE OF LAY-OFF WHICH WAS GIVEN TO THEM WAS IN ACCORDANCE WITH THEIR CON-TRACTS OF SERVICE. IN THIS RESPECT, WE ARE IMPELLED TO FIND THAT IT WAS A TERM OF THEIR CONTRACTS OF SERVICE THAT THEY WOULD, ON REASONABLE NOTICE, BE LAID OFF IN THE SUMMER MONTHS IF IT TURNED OUT, AS WE FIND IT DID, THAT THERE WAS NO WORK OR INSUFFICIENT WORK TO KEEP THEM EMPLOYED DURING THAT PERIOD.

IN THE RESULT, IT IS UNNECESSARY FOR US TO EXPRESS ANY OPINION ONE WAY OR THE OTHER AS TO WHETHER, AND IN WHAT CIRCUMSTANCES, THE CONTRACTING OUT OF WORK BY AN EMPLOYER DURING THE OPERATION OF THE SECTION WOULD CONSTITUTE AN ALTERATION OF TERMS OR CONDITIONS OF EMPLOYMENT CONTRARY TO SECTION 59 (1). IN THE INSTANT CASE THE LACK OF WORK LEADING TO THE LAY-OFF OF THE TWO EMPLOYEES DID NOT RESULT FROM THE CONTRACTING OUT OF WORK WHICH WOULD OTHERWISE HAVE BEEN SUFFICIENT TO KEEP THEM EMPLOYED.

It is clear that the evidence called by the complainant falls short of establishing any basis for a finding on our part that the respondent has violated section 59(1) of the Act.

IN VIEW OF THE FOREGOING, THE COMPLAINT MUST BE DIS-

BOARD MEMBER E. BOYER DISSENTED AND SAID:-

"I dissent, I would have found that the evidence was sufficient to cast an explanation on the respondent in the absence of which I would have found a violation of section 59 (1) of the Act. In the result, I would have ordered the two employees reinstated in their employment with compensation for their lost wages and employment benefits."

11188-65-U: JAMES SPEIRS (COMPLAINANT) V. INDUSTRIAL TRAINING BRANCH OF THE DEPARTMENT OF LABOUR (RESPONDENT).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"THE COMPLAINANT HAS FILED A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH HE NAMES THE INDUSTRIAL TRAINING BRANCH OF THE DEPARTMENT OF LABOUR AS THE RESPONDENT AND ALLEGES THAT HE HAS BEEN DEALT WITH CONTRARY TO SECTION 78 OF THAT ACT. THE SUBSTANCE OF HIS COMPLAINT IS THAT "THE RESPONDENT" ISSUED TO HIM A CERTIFICATE OF QUALIFICATION IN THE "ELECTRICAL MAINTENANCE TRADE" RATHER THAN IN "THE ELECTRICAL TRADE".

IT IS OBVIOUS THAT THIS COMPLAINT IS NOT ONE THAT LIES WITHIN THE JURISDICTION OF THIS BOARD. SECTION 11 OF THE INTERPRETATION ACT, R.S.O. 1960, c. 191, PROVIDES THAT "NO ACT AFFECTS THE RIGHTS OF HER MAJESTY, HER HEIRS, OR SUCCESSORS, UNLESS IT IS EXPRESSLY STATED THEREIN THAT HER MAJESTY IS BOUND THEREBY". THUS, SINCE THE CROWN IS NOT EXPRESSLY BOUND BY THE LABOUR RELATIONS ACT, THAT ACT DOES NOT APPLY TO THE RESPONDENT NAMED IN THIS CASE, WHO IS A MEMBER OF A BRANCH OF A DEPARTMENT OF THE GOVERNMENT OF ONTARIO. HOWEVER, EVEN IF THIS WERE NOT THE CASE, THE COMPLAINANT WOULD HAVE NO REMEDY UNDER THE LABOUR RELATIONS ACT. AS THE BOARD POINTED OUT IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, p. 62:

IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSONS HAS BEEN REFUSED EMPLOYMENT, DISCHARGE, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

IN SO FAR AS SECTION 78 OF THE ACT IS CONCERNED - THE SECTION THAT THE RESPONDENT STATES FORMS THE BASIS FOR HIS COMPLAINT - IT DEALS WITH A PROCEDURAL PROBLEM. IT READS AS FOLLOWS:

78. WHERE IN ANY PROCEEDINGS BEFORE THE BOARD THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PERSON OR TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR HAS BEEN INCORRECTLY NAMED, THE BOARD MAY ORDER THE PROPER PERSON OR TRADE UNION TO BE SUBSTITUTED OR ADDED AS A PARTY TO THE PROCEEDINGS OR TO BE CORRECTLY NAMED UPON SUCH TERMS AS APPEAR TO THE BOARD TO BE JUST.

This section cannot by any stretch of the imagination be regarded as empowering the Board is issue a directive of any sort to any person in any branch of the Department of Labour to correct a bona fide mistake he is alleged to have made under legislation other than the Labour Relations Act. In addition, we have been unable to find in the Labour Relations Act any other provision that would entitle the complainant to the relief he seeks. Any remedy that the complainant has would appear to lie under the Apprentice—ship and Tradesmen's Qualification Act. 1964.

THIS COMPLAINT IS ACCORDINGLY DISMISSED."

#### INDEXED ENDORSEMENT - SECTION 79A

10600-65-M: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-C10, C.L.C. (Trade Union) v. L & M. Food Market (Ontario) Limited (Employer).

THE BOARD ENDORSED THE RECORD AS FOLLOWS:-

"This is a reference from the Minister to the Board pursuant to section 79a of The Labour Relations Act. The Question referred to the Board in this case is whether, in the circumstances outlined hereafter, Local 633 of the Amalgamated Meat Cutters and Butcher Workmen of North America was entitled to give, as it has purported to do, notice to the employer, L & M Food Market (Ontario) Limited, of its desire to bargain pursuant to the provisions of section 47a of the Act.

THE FACTS WHICH WERE AGREED TO BY THE PARTIES WERE as follows. For some 41 years prior to March 16th. 1965. STEINBERG'S LIMITED (HEREINAFTER CALLED STEINBERG'S OPERATED AND CARRIED ON A FOOD MERCHANDISING BUSINESS IN CERTAIN STORE PREMISES OWNED BY IT AS FERGUS, ONTARIO. ON OR ABOUT THE 31ST AUGUST, 1964, THE FOOD HANDLERS! LOCAL UNION 175 ALSO OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AND LOCAL UNION 633 ENTERED INTO A SINGLE COLLECTIVE AGREEMENT WITH STEINBERG'S EFFECTIVE, WITH CERTAIN AUTOMATIC CONTINUANCE PROVISIONS BEYOND THAT DATE, TO MARCH 31ST, 1966. THE UNIT OF EMPLOY-EES FOR WHICH LOCAL 175 IS THE BARGAINING AGENT IS DESCRIBED IN THE AGREEMENT AS "ALL EMPLOYEES IN THE RETAIL STORES OF STEINBERG'S LIMITED (ONTARIO DIVISION) - - EXCLUDING MEAT DEPARTMENT EMPLOYEES AND OTHER EXCEPTIONS NOT HERE MATERIAL. THE UNIT FOR WHICH LOCAL 633 IS THE BARGAINING AGENT IS DESCRIBED IN THE AGREEMENT AS "ALL MEAT DEPARTMENT EMPLOYEES OF STEINBERG'S LIMITED (ONTARIO DIVISION) - - WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL.

IN OR ABOUT MARCH 1965, STEINBERG'S AS LESSOR ENTERED INTO A TRANSACTION WITH L & M FOOD MARKET (ONTARIO) LIMITED (HEREINAFTER CALLED L & M) UNDER WHICH L & M BECAME THE TENANT OF STEINBERG'S STORE PREMISES IN QUESTION AT FERGUS UNDER A FIVE YEAR LEASE, DATED MARCH 3RD, 1965. WHILE THE LEASE WAS NOT PRODUCED IN EVIDNECE. IT WAS AGREED THAT UNDER ITS TERMS L & M ALSO LEASED CERTAIN STORE EQUIPMENT FROM STEINBERGIS, INCLUDING CASH REGISTERS, REFRIGERATORS AS WELL AS OTHER ITEMS OF EQUIPMENT WHICH WERE NOT PARTICULARIZED. IN ACCORDANCE WITH THE TRANSACTION BETWEEN THEM. L & M ALSO PURCHASED CERTAIN OF STEINBERG'S STOCK OF STORE MERCHANDISE. STEINBERG'S, HOWEVER, DID NOT SELL L & M ANY OF ITS OWN BRAND-NAMED MERCHANDISE, BUT REMOVED THIS FROM THE STORE WHEN IT VACATED THE PREMISES AT THE COMMENCEMENT OF THE LEASE. L & M TOOK POSSESSION ON, AND THE CLOSING DATE OF THE TRANSACTION WAS MARCH 19TH, 1965. SOME THREE DAYS LATER AND FOLLOWING CERTAIN ALTERATIONS TO THE PREMISES BY L & M. THE STORE WAS RE-OPENED AND BUSINESS OPERATIONS WERE RE-SUMMED BY AND IN THE NAME OF L & M FOOD MARKET (ONTARIO) LIMITED.

IT WAS AGREED BY THE PARTIES THAT THE TRANSACTION IN QUESTION DID NOT PROVIDE FOR THE PAYMENT OF ANY CONSIDERATION TO STEINBERG'S FOR ITS GOODWILL, NOR DID IT IMPOSE ANY RESTRICTION ON STEINBERG'S FROM OPENING AND OPERATING A FOOD MERCHANDISING STORE IN COMPETITION TO L & M NEXT TO OR IN THE SAME AREA AS THE LEASED STORE.

APART FROM THE FOREGOING ORAL AGREEMENT OF THE PARTIES AS TO THE NATURE AND EFFECT OF THE TRANSACTION BETWEEN STEINBERG'S AND L & M, NO FURTHER EVIDENCE, DOCUMENTARY OR OTHERWISE, WAS ADDUCED CONCERNING ANY OTHER DETAILS OF THE TRANSACTION BETWEEN THE TWO COMPANIES IN QUESTION.

Counsel for the employer argues that section 47a cannot operate to continue any bargaining rights for Local 633 for employees of the employer in its meat department in a like bargaining unit, because plainly there have not been any persons employed by L & M since the date of the transaction who would come within the description of a like bargaining unit. The only person working in the meat department is one Bruzynski, who, the parties admit, performs managerial functions. Counsel contends that there are two conditions precedent to the operation of section 47a;

- (1) THE TRANSACTION MUST CONSTITUTE THE SALE OF A BUSINESS; AND
- (2) THERE MUST BE OR HAVE BEEN SINCE THE DATE OF THE TRANSACTION EMPLOYEES IN A LIKE BARGAINING UNIT.

ON THIS BASIS, EVEN IF THE TRANSACTION IS FOUND TO CONSTITUTE THE SALE OF A BUSINESS, LOCAL 633 MUST, ON THE SECOND GROUND, FAIL IN ITS APPLICATION.

THE REPRESENTATIVE FOR LOCAL 633. ON THE OTHER HAND. ARGUES THAT SECTION 47A IS CONCERNED MERELY WITH THE CONTINUA-TION OF BARGAINING RIGHTS. IN SUCH CIRCUMSTANCES, THE ABSENCE OF EMPLOYEES IN THE LIKE BARGAINING UNIT DOES NOT PRECLUDE THE CONTINUANCE OF A UNION S BARGAINING RIGHTS UNDER THE SECTION ANY MORE THAN THE ABSENCE OF EMPLOYEES FROM THE BARGAINING UNIT OF, E.G., STEINBERG'S, WOULD HAVE AFFECTED ITS BARGAINING RIGHTS FOR THE EMPLOYEES OF THAT COMPANY. IN OTHER WORDS, JUST AS A UNION'S BARGAINING RIGHTS CONTINUE EVEN THOUGH THERE MAY. FROM TIME TO TIME, BE AN ABSENCE OF EMPLOYEES FROM THE BARGAINING UNIT REPRESENTED BY IT. THE SAME SITUATION MUST PREVAIL WHERE THE EXISTENCE OF THE UNION'S BARGAINING RIGHTS ARE PROTECTED AND PEESERVED BY SECTION 47A. IT IS HIS POSITION. THEREFORE. THAT IT IS REASONABLE TO CONCLUDE. IN THE ABSENCE OF ANY CON-TRARY PROVISIONS IN THE SECTION, THAT THE LEGISLATURE INTENDED THE SECTION TO PRESERVE AND PROTECT AND, THEREFORE, TO CONTINUE A UNION'S BARGAINING RIGHTS UNDER SECTION 47A TO REPRESENT EMPLOYEES IN A LIKE BARGAINING UNIT OF THE NEW EMPLOYER EVEN THOUGH, FOR THE TIME BEING, THERE ARE NO EMPLOYEES IN SUCH A UNIT.

THE BOARD IN THE L&M FOOD MARKET (ONTARIO) LIMITED CASE, BOARD FILE 10599, FOUND FOR THE REASONS GIVEN IN ITS ENDORSEMENT IN THAT CASE THAT THE TRANSACTION ABOVE DESCRIBED BETWEEN THE EMPLOYER AND STEINBERG'S, IN SO FAR AS IT AFFECTED THE FOOD HANDLERS' LOCAL UNION 175, CONSTITUTED A DISPOSITION OF A BUSINESS TO L&M WITHIN THE MEANING OF SECTION 47A OF THE ACT. IN THE RESULT, THE BOARD THERE FOUND THAT LOCAL175 WAS ENTITLED TO GIVE NOTICE TO L&M OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.

IT IS OUR VIEW THAT THERE HAS BEEN A DISPOSITION FROM STEINBERG'S TO L & M WITHIN THE MEANING OF SECTION 47A OF THE BUSINESS OF STEINBERG'S AT THE FERGUS STORE, INCLUDING THAT PART OF THE BUSINESS CARRIED ON IN THE MEAT DEPARTMENT. IT IS MANIFEST THAT THE GENERAL POLICY OF THE LEGISLATION IS THAT A UNION'S BARGAINING RIGHTS, ONCE ESTABLISHED, ARE NOT SUSPENDED OR THROWN INTO ABEYANCE MERELY BECAUSE, FOR THE TIME BEING. THERE ARE NO EMPLOYEES IN THE BARGAINING UNIT. THE MISCHIEF SOUGHT TO BE AVOIDED BY THIS POLICY IS, OF COURSE, QUITE OBVIOUS. WE ARE URGED TO FIND, HOWEVER, THAT THE CONTINUATION OF A UNION'S BARGAINING RIGHTS BY VIRTUE OF THE PROVISIONS OF SECTION 47A CONSTITUTES AN EXCEPTION TO THIS GENERAL LEGISLA-TIVE POLICY. IN THE ABSENCE OF SOME CLEAR LEGISLATIVE DIREC-TION TO THE CONTRARY, WE ARE NOT PERSUADED THAT THE LEGISLATURE INTENDED TO MAKE THE OPERATION OF SECTION 47A AN EXCEPTION TO THIS GENERAL POLICY. IN OUR OPINION, THE LANGUAGE OF THE SECTION AND IN PARTICULAR THE WORDS "FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS" ARE NOT SO CLEAR AND UNEQUIVOCAL AS TO INDICATE, AS CONTENDED, THAT THE PRESENCE OF EMPLOYEES IN THE LIKE BARGAINING UNIT IS A CONDITION PRECEDENT TO THE OPERATION OF THE SECTION. IN THE RESULT, WE ARE CONSTRAINED TO CONSTRUE

THE SECTION IN TERMS OF THE GENERAL LEGISLATIVE POLICY
AND IN KEEPING WITH THE MISCHIEF WHICH THAT POLICY SEEKS
TO SUPPRESS AND THE REMEDY WHICH IT IS INTENDED TO ADVANCE.
ACCORDINGLY, WE FIND THAT THERE IS NO REQUIREMENT FOR THE
OPERATION OF THE SECTION AND THE CONTINUANCE OF THE UNION'S
BARGAINING RIGHTS THEREUNDER, THAT THERE BE EMPLOYEES IN
THE BARGAINING UNIT. IN THE RESULT, IT IS OUR DECISION ON
THE QUESTION REFERRED TO US BY THE MINISTER THAT:—

- (a) Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, continues to be the bargaining agent for the employees of the respondent in a like bargaining unit to that for which it is the bargaining agent of the employees of Steinberg's.
- (B) THE LIKE BARGAINING UNIT OF THE EMPLOYEES IN THE BUSINESS ACQUIRED BY THE RESPONDENT FROM STEINBERG'S CONSISTS OF ALL MEAT DEPARTMENT EMPLOYEES OF L & M FOOD MARKET (ONTARIO) LIMITED AT ITS STORE IN FERGUS, SAVE AND EXCEPT PART-TIME EMPLOYEES EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.
- (c) Local Union 633 was entitled to give, as it has done, a written notice to the respondent of its desire to bargain with a view to making a collective agreement."

BOARD MEMBER H. F. IRWIN DISSENTED AS FOLLOWS:-

" | DISSENT.

WITH RESPECT, I DO NOT CONSIDER THE TRANSACTION BETWEEN STEINBERG'S LIMITED AND THE RESPONDENT, L & M FOOD MARKET (ONTARIO) LIMITED, CONSTITUTES A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. CONSEQUENTLY, LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA DOES NOT CONTINUE TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT IN A LIKE BARGAINING UNIT TO THAT FOR WHICH IT IS THE BARGAINING AGENT OF THE EMPLOYEES OF STEINBERG'S LIMITED.

THE MAJORITY AWARD, HOWEVER, HAS FOUND THAT THE TRANSACTION DOES CONSTITUTE SUCH A SALE AND THAT LOCAL UNION 633 CONTINUES TO BE THE BARGAINING AGENT AND IS ENTITLED TO GIVE NOTICE TO THE RESPONDENT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. WITH RESPECT, EVEN IF BARGAINING RIGHTS CONTINUE, I DO NOT BELIEVE THAT LOCAL 633 IS ENTITLED TO GIVE NOTICE TO THE RESPONDENT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AT THIS TIME WHEN THERE ARE NO EMPLOYEES IN THE BARGAINING UNIT.

SECTION 47A (2) OF THE ACT STATES THAT THE GIVING OF NOTICE TO BARGAIN UNDER THAT SECTION HAS THE SAME EFFECT AS A

NOTICE GIVEN UNDER SECTION 11 OF THE ACT. SECTION 11 AND 12 OF THE ACT READ AS FOLLOWS:-

- 11. FOLLOWING CERTIFICATION, THE TRADE UNION SHALL GIVE THE EMPLOYER WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.
- 12. THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

(EMPHASIS ADDED)

THE TERM "COLLECTIVE AGREEMENT" IS DEFINED IN SECTION 1 (1) (c) OF THE ACT AS FOLLOWS:-

(c) "COLLECTIVE AGREEMENT" MEANS AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION, ON THE ONE HAND, AND A TRADE UNION THAT, OR A COUNCIL OF TRADE UNIONS THAT, REPRESENTS EMPLOYEES OF THE EMPLOYER OR EMPLOYEES OF MEMBERS OF THE EMPLOYERS' ORGANIZATION, ON THE OTHER HAND, CONTAINING PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE EMPLOYEES;

(EMPHASIS ADDED)

IN THE INSTANT CASE, ON THE DATE OF THE APPLICATION THERE WERE NO EMPLOYEES OF THE NEW EMPLOYER IN THE LIKE BARGAINING UNIT NOR HAVE THERE EVER BEEN ANY SUCH EMPLOYEES. THEREFORE. THE UNION CANNOT BE SAID AT ANY TIME UP TO THE DATE OF THE HEARING TO REPRESENT EMPLOYEES OF THE NEW EMPLOYER IN THE LIKE BARGAINING UNIT AND CONSEQUENTLY CANNOT MAKE A COLLECTIVE AGREEMENT AS DEFINED IN SECTION 1 (1) (c) OF THE ACT. IF THE UNION CANNOT MAKE A COLLECTIVE AGREEMENT UNLESS IT REPRESENTS EMPLOYEES IN A LIKE BARGAINING UNIT, IT CANNOT BARGAIN IN GOOD FAITH TO MAKE A COLLECTIVE AGREEMENT AS REQUIRED UNDER THE PROVISIONS OF SECTION 12. As the giving of notice under section 47a has the same effect AS GIVING NOTICE TO BARGAIN UNDER SECTION 11, IT IS NOT ENTITLED TO GIVE SUCH NOTICE UNTIL IT CAN FULFIL THE ULTIMATE PURPOSE FOR WHICH THE NOTICE IS GIVEN NAMELY, TO MAKE A COLLECTIVE AGREEMENT. THIS CAN ONLY BE DONE WHEN THERE ARE ONE OR MORE EMPLOYEES IN THE BARGAINING UNIT. TO HOLD OTHERWISE, AND REQUIRE THE PARTIES TO BARGAIN WHEN THERE ARE NO EMPLOYEES AND MAY NEVER BE EMPLOYEES IN THE LIKE BARGAINING UNIT, MAKES A FARCE AND A MOCKERY OF THE BAR-GAINING AND CONCILIATION PROCESSES WHICH ARE PRESCRIBED IN SECTIONS 11 to 31 inclusive, of The Labour Relations Act. Section 13 (1) and sections 22 read as follows:-

- 13. (1) Where notice has been given under section 11 or 40, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.
- 22. AS SOON AS A CONCILIATION BOARD IS
  ESTABLISHED, IT SHALL ENDEAVOUR TO EFFECT
  AGREEMENT BETWEEN THE PARTIES ON THE
  MATTERS REFERRED TO IT.

(EMPHASIS ADDED)

THE EFFORTS OF THE CONCILIATION OFFICER AND THE CONCILIATION BOARD ARE ABORTIVE FROM THE VERY BEGINNING BECAUSE THE UNION, WITH NO EMPLOYEES TO REPRESENT, CANNOT MAKE A COLLECTIVE AGREEMENT.

This view is supported by the Board's decision in the Niagara Crushed Stone (Humberstone) Ltd., C.C.H. Canadian Labour Law Reporter, ¶16,118 at p. 12,222, Transfer Binder 1955-1959, in which which the Board Said:-

THE TERM "COLLECTIVE AGREEMENT" IS DEFINED IN SECTION 1 (1) (c) IN PART AS "AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER - - - ON THE ONE HAND, AND A TRADE UNION THAT - - REPRESENTS EMPLOYEES OF THE EMPLOYER - - ON THE OTHER HAND - - O" IN OTHER WORDS, AN AGREEMENT BETWEEN AN EMPLOYER AND A TRADE UNION THAT DOES NOT REPRESENT EMPLOYEES OF AN EMPLOYER CANNOT BE TREATED AS A COLLECTIVE AGREEMENT AND WOULD NOT THEREFORE SERVE AS A BAR TO AN APPLICATION UNDER SECTION 40, SINCE THE BAR CREATED BY THAT SECTION IS DEPENDENT UPON THE EXISTENCE OF A COLLECTIVE AGREEMENT, NOT MERELY AN AGREEMENT.

FOR THESE REASONS, I WOULD HAVE ADVISED THE MINISTER THAT LOCAL UNION 633 IS NOT AT PRESENT ENTITLED TO GIVE NOTICE TO THE EMPLOYER TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. ALTHOUGH I FIND TO THE CONTRARY, ASSUMING THAT THE MAJORITY DECISION IS CORRECT IN HOLDING THAT A SALE TOOK PLACE WITHIN THE MEANING OF SECTION 47A OF THE ACT, THE BARGAINING RIGHTS OF LOCAL 633 AUTOMATICALLY CONTINUE FOR THE EMPLOYEES IN THE LIKE BARGAINING UNIT. IF, AS AND WHEN, THE EMPLOYER HIRES AN EMPLOYEE WHO FALLS WITHIN THE DESCRIPTION OF THE LIKE BARGAINING UNIT, LOCAL 633 WILL THEREUPON BE ENTITLED TO GIVE NOTICE TO THE EMPLOYER TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT BECAUSE AT THAT TIME IT WILL REPRESENT AN EMPLOYEE IN THE BARGAINING UNIT

AND THEREBY BE QUALIFIED TO MAKE A COLLECTIVE AGREEMENT AS DEFINED IN SECTION  $1\ (1)\ (c)$  OF THE LABOUR RELATIONS ACT."

### TRUSTEESHIP REPORT

T-25-65

INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, LOCAL 49, TAKEN INTO TRUSTEESHIP ON NOVEMBER 26, 1965 UNDER THE SUPERVISION OF EDWARD WITTHAMES, TEMPORARY ADMINISTRATOR, THE APPOINTMENT OF THE SUPERVISOR HAVING BEEN MADE BY WM. A. LAZZERINI, PRESIDENT OF INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION. THE REPORT INDICATES AS TO THE PERIOD OF TIME DURING WHICH SUPERVISION OR CONTROL IS TO BE EXERCISED: "THE TEMPORARY ADMINISTRATION OVER LOCAL 49 SHALL BE TERMINATED AS SOON AS IT IS POSSIBLE TO DO SO WITHOUT JEOPARDIZING THE LOCAL UNION AS A CONTINUING AFFILIATE OF THE INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION."

## STATISTICAL TABLES FOR DECEMBER 1965

TABLE 1

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED			
		DECEMBER 1965		OF FISCAL YEAR	
1.	CERTIFICATION	77	. 745	706	
11.	Declaration Terminating Bargaining Rights	2	47	67	
111.	Declaration of Successor Status	11	17	3	
IV.	Declaration That Strike Unlawful	4	42	<b>3</b> 5	
V.	Declaration That Lock- Out Unlawful	1	L <sub>†</sub>	5	
VI.	Consent to Prosecute	6	79	64	
VII.	Complaint of Unfair Practice in Employment (Section 65)	6	83	130	
VIII.	MISCELLANEOUS	_1	39	20	
	TOTAL	108	1056	1030	

TABLE II
HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number			
	DECEMBER 1965	1st 9 MTHS OF 1965-66		
HEARINGS AND CONTINUATION OF				
HEARINGS BY THE BOARD	76	900	879	

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

# BOARD BY MAJOR TYPES

			Number Disposed of			
		DECEMBER 1965	1st 9 Months 1965-66	of Fiscal Yr. 1964-65		
i.	CERTIFICATION	88	761	706		
11.	Declaration Terminating Bargaining Rights	8	52	71		
111.	DECLARATION OF SUccessor Status	1	10	6		
IV.	Declaration That Strike Unlawful	7	40	35		
٧.	Declaration That Lock- Out Unlawful	3	4	5		
V1.	Consent to Prosecute	32	74	60		
V11.	Complaint of Unfair Practice in Employment (Section 65)	11	89	139		
VIII.	MISCELLANEOUS	8	60	21		
	TOTAL	158	1090	1043		

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

### BY TYPE AND DISPOSITION

		Number of Applications			Number	R OF EMPLOYEES*	
		DECEMBER 1965		FISCAL YR. 1964-65	DECEMBER 1965	1st 9 Mths 1965-66	
١.	CERTIFICATION						
	GRANTED DISMISSED WITHDRAWN	65 12 11	567 127 67	522 120 64	1634 200 226	14838 8444 3361	15833 5706 2385
	TOTAL	88	761	706	2060	26643	23924
11.	OF BARGAINING RIGHTS						
	GRANTED Dismissed Withdrawn	6 2	24 25 3	46 23 2	93 35 —	1294 765 119	576 451 82
	TOTAL	8	_52	71	128	2178	1109

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			Number of Applications			
			DECEMBER 1965	1965-66	FISCAL YEAR. 1964-65	
111.	DECLARATION THAT	STRIKE				
	Granted Dismissed Withdrawn		1 1 <u>5</u>	7 4 29	13 5 <u>17</u>	
		TOTAL	7	40	<u>35</u>	
١٧.	DECLARATION THAT	г <u> </u>				
	Granted Dismissed Withdrawn		3	<u>_</u>	1 1 _3	
		TOTAL	<u>3</u>	<u>4</u>	<u>5</u>	
V.	CONSENT TO PROSE	CUTE				
	Granted Dismissed Withdrawn		21 9 2	29 14 <u>31</u>	11 13 <u>36</u>	
		TOTAL	<u>32</u>	<u>74</u>	60	

TABLE V

## REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

## OF BY THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER OF VO	
	DECEMBER 1965	1st 9 Months 1965-66	
CERTIFICATION AFTER VOTE*			
PRE-HEARING VOTE	6	21	17
POST-HEARING VOTE	3	25	27
BALLOTS NOT COUNTED	-	_	-
DISMISSED AFTER VOTE			
PRE-HEARING VOTE	_	6	8
POST-HEARING VOTE	3	26	43
BALLOTS NOT COUNTED		2	
TOTA	L <u>12</u>	80	<u>95</u>

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

## TABLE VI

## REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF

## BY THE ONTARIO LABOUR RELATIONS BOARD

				NUMBER OF	VOTES
			DECEMBER 1965	1st 9 Months 1965-66	FISCAL YEAR 1964-65
*RESPONDENT			-	1	- Comp
RESPONDENT	UNION	UNSUCCESSFUL	_3	19	12
		TOTAL	3	20	12

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



# ONTARIO LABOUR RELATIONS BOARD



## CASE LISTINGS JANUARY 1966

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7.	Application under Section 47a	686
8.	Applications for Determination under Section $79(2)$	686
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	11113-65-M: 11254-65-M:	Contractors Association Taylor Woodrow Installations Limited King-Yonge-Yarmon Leasehold Partnership	767 772 774
	10906-65-R:	of Board's Decision Essex Wire Corporation Iroquois Falls and Calvert District	775
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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JANUARY 1966

#### BARGAINING AGENTS CERTIFIED DURING JANUARY

No Vote Conducted

9926-64-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. SUPER CITY DISCOUNT FOODS LIMITED AND LOBLAW GROCETERIAS Co., LIMITED (RESPONDENTS) v. GENERAL WORKERS LOCAL 800 OF THE INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (INTERVENER).

UNIT: "ALL EMPLOYEES OF SUPER CITY DISCOUNT FOODS LIMITED IN THE TOWNSHIP OF SANDWICH WEST, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PRODUCE MANAGER, MEAT MANAGER AND HEAD CHECKER." (38 EMPLOYEES IN THE UNIT).

10782-65-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PLANT AT 501 ALLIANCE AVENUE, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (301 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 737 ).

10937-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT DRYDEN, SAVE AND EXCEPT ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

10941-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT).

<u>Unit</u>: "ALL employees of the respondent at Dryden regularly employed for not more than 24 hours per week and students employed during the school vacation period." (13 employees in the unit).

10981-65-R: Nurses' Association of Riverview Hospital (Applicant) v. Riverview Health Association (Respondent).

UNIT: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT THE RIVERVIEW HOSPITAL, WINDSOR, SAVE AND EXCEPT ASSISTANT NURSING SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF ASSISTANT NURSING SUPERINTENDENT." (59 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE NIGHT SUPERVISOR, THE RELIEF NIGHT SUPERVISOR, THE AFTERNOON SUPERVISOR AND THE RELIEF AFTERNOON SUPERVISOR EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE UNIT. BUT THAT DAY SUPERVISORS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD NOTED THE ADMISSION OF THE RESPONDENT THAT PERSONS CLASSIFIED BY IT AS HEAD NURSES AND ASSISTANT HEAD NURSES DO NOT EXERCISE MANAGERIAL FUNCTION AND ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 743 ).

10998-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF PORT COLBORNE (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT CLERK-TREASURER, ASSISTANT CLERK-TREASURER, TOWN ENGINEER, CHIEF ASSESSOR, WORKS SUPERINTENDENT, TOWN FOREMAN, CONFIDENTIAL SECRETARY TO THE MAYOR AND THE CLERK-TREASURER, CONFIDENTIAL SECRETARY TO THE TOWN ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

11008-65-R: Local 280 of the Hotel & Restaurant Employees' and Bartenders' International Union. A.F.L. C.I.O. C.L.C. (Applicant) v. Windsor Arms Hotel Limited (Respondent).

UNIT: "ALL FULL-TIME AND PART-TIME TAPMEN, BARTENDERS, BEVERAGE WAITERS, BARBOYS AND IMPROVERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).

11071-65-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. GROVES MEMORIAL COMMUNITY HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN FERGUS, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

11091-65-R: International Printing Pressmen and Assistants' Union of North America (Applicant) v. Auty Printing Limited (Respondent).

<u>UNIT:</u> "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN STREETSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

11126-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, Local Union 721 (Applicant) v. Frankel Structural Steel Limited (Respondent) v. Shopmen's Local Union #743 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the A.F.L.-C.I.O. C.L.C.) (Intervener #1) v. International Hod Carriers Building & Common Labourers Union of America, Local 506 (Intervener #2). (3 employees).

(SEE INDEXED ENDORSEMENT PAGE 744 ).

11180-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) v. PROGRESS PRINTING LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11194-65-R: DISTRICT 50, U.M.W.A. (APPLICANT) v. CHIPMAN CHEMICALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT ON BURLINGTON STREET,
HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND
SALES STAFF, THE SENIOR CHEMIST AND LABORATORY TECHNICIANS."

(9 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT "OFFICE STAFF" INCLUDES ORDER CLERICAL STAFF.

11196-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, R.W.D.S.U. AFL:CIO: CLC (APPLICANT) v. ELLENZWEIG BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

11198-65-R: TEXTILE WORKERS UNION OF AMERICA, AFL, CIO, CLC (APPLICANT) v. THE LADY GALT TOWELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF BURFORD, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FORELADIES, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND ASSISTANT FORELADY, LABORATORY PERSONNEL, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (56 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT EMPLOYEES ENGAGED IN THE INSTALLATION OF MACHINERY ARE NOT INCLUDED IN THE BARGAINING UNIT.

11204-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA (AFL-CIO) (CLC) (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (60 EMPLOYEES IN THE UNIT).

11218-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. ESTATE JOSEPH LISTER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LISTER BLOCK BUILDING AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

11221-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. LANARK MANUFACTURING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNNVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PLANT GUARDS, PLANT NURSES, OFFICE AND SALES STAFF." (593 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11222-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT)
v. Hershey Chocolate of Canada Ltd. (Respondent) v. The Canadian Union of Operating
Engineers (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SMITH FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LABORATORY STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (117 EMPLOYEES IN THE UNIT).

11223-65-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. UNION GAS COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF UNION GAS COMPANY OF CANADA, LIMITED OF THE CHATHAM DIVISION, SAVE AND EXCEPT THOSE EMPLOYEES OF THE COMPANY'S HEAD OFFICE, CHATHAM, SUPERVISORY EMPLOYEES, THOSE EMPLOYEES ABOVE THE RANK OF SUPERVISION, THOSE EMPLOYEES WORKING IN A CONFIDENTIAL CAPACITY, SALES AND CASUAL EMPLOYEES." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11231-65-R: Local Union # 1940, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Mechanical Drywall (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11247-65-R: THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. LIGHTFOOT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON,
HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE
TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR
EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME,
SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING
FOREMAN." (10 EMPLOYEES IN THE UNIT).

"THE BOARD IS SATISFIED THAT WHETHER MECHANICS AND OR WELDERS ARE OR ARE NOT INCLUDED IN THE BARGAINING UNIT, THE APPLICANT HAS A SUFFICIENT NUMBER OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS TO ENTITLE IT TO OUTRIGHT CERTIFICATION.

IT APPEARS THAT THE PARTIES ARE NOT IN AGREEMENT AS TO WHETHER THE MECHANICS AND WELDERS ARE "PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT". IT APPEARS TO THE BOARD THAT THE PARTIES THEMSELVES SHOULD BE ABLE TO RESOLVE THIS QUESTION AT THE BARGAINING TABLE. THE BOARD DOES NOT, THEREFORE, AT THIS TIME DEEM IT NECESSARY TO INQUIRE INTO THIS MATTER. HOWEVER, IF THE PARTIES ARE UNABLE TO RESOLVE THIS QUESTION, THEN IT IS POINTED OUT THAT EITHER PARTY IS ENTITLED TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT. "

11248-65-R: THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. THE TATHAM COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRICE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

"THE BOARD IS SATISFIED THAT WHETHER MECHANICS AND OR WELDERS ARE OR ARE NOT INCLUDED IN THE BARGAINING UNIT, THE APPLICANT HAS A SUFFICIENT NUMBER OF THE EMPLOYEES OF THE RESPONDENT AS MEMBERS TO ENTITLE IT TO OUTRIGHT CERTIFICATION.

IT APPEARS THAT THE PARTIES ARE NOT IN AGREEMENT AS TO WHETHER THE MECHANICS AND WELDERS ARE "PRIMARILY ENGAGED IN THE REPARING AND MAINTAINING OR CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT". IT APPEARS TO THE BOARD THAT THE PARTIES THEMSELVES SHOULD BE ABLE TO RESOLVE THIS QUESTION AT THE BARGAINING TABLE. THE BOARD DOES NOT, THEREFORE, AT THIS TIME DEEM IT NECESSARY TO INQUIRE INTO THIS MATTER. HOWEVER, IF THE PARTIES ARE UNABLE TO RESOLVE THIS QUESTION, THEN IT IS POINTED OUT THAT EITHER PARTY IS ENTITLED TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT."

11252-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Modern Builders (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHINA RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11253-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Dravo of Canada Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT MINERS AND SHAFTSMEN ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

11259-65-R: United Steelworkers of America (Applicant) v. Taylor Atlas Maintenance Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE OFFICE BUILDINGS OF THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, AND OFFICE STAFF." (47 EMPLOYEES IN THE UNIT).

11271-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-C10) (CLC) (APPLICANT) v. DIAMOND WATERPROOFING LIMITED (RESPONDENT).

Unit: "ALL construction Labourers in the employ of the respondent in the Counties of Carleton (excepting therefrom Marlborough Township), Russell and Prescott, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

11273-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) v. COMMERCIAL ENGRAVERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND CORRECTION OF CREATIVE ART, ILLUSTRATIONS OR COPY FOR COMMERCIAL OR REPRODUCTIVE PURPOSES INCLUDING BUT NOT LIMITED TO COMMERCIAL AIRBRUSH ARTISTS, PASTE UP ARTISTS, RETOUCHERS, PHOTOSTAT OPERATORS, LETTERERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11274-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) v. THE SUPERIOR ENGRAVERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND CORRECTION OF CREATIVE ART, ILLUSTRATIONS OR COPY FOR COMMERCIAL OR REPRODUCTIVE PURPOSES INCLUDING BUT NOT LIMITED TO COMMERCIAL AIRBRUSH ARTISTS, PASTE UP ARTISTS, RETOUCHERS, PHOTOSTAT OPERATORS, LETTERERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11275-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 42-L (APPLICANT) v. STANDARD ENGRAVERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON ENGAGED IN THE PREPARATION AND CORRECTION OF CREATIVE ART, ILLUSTRATIONS OR COPY FOR COMMERCIAL OR REPRODUCTIVE PURPOSES INCLUDING BUT NOT LIMITED TO COMMERCIAL AIRBRUSH ARTISTS, PASTE UP ARTISTS, RETOUCHERS, PHOTOSTAT OPERATORS, LETTERERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(Having regard to the decision of the Board dated January 26th, 1966, in the Commercial Engravers Limited Case, Board File No. 11273-65-R and the decision of the Board dated January 26th, 1966, in The Superior Engravers Limited Case, Board File No. 11274-65-R.)

11278-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91,
AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS (APPLICANT) v. LIGHTFOOT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS

AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (5 EMPLOYEES IN THE UNIT).

11279-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION AFL-CIO-CLC (APPLICANT) v. GALT-BRANTFORD MALLEABLE LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF."

(43 EMPLOYEES IN THE UNIT).

11284-65-R: United Steelworkers of America (Applicant) v. Sudbury Petroflame Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

11285-65-R: United Steelworkers of America (Applicant) v. Canadian Aniline & Extract Co., Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, RESEARCH LABORATORY PERSONNEL, QUALITY CONTROL LABORATORY PERSONNEL, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11286-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. H.G. WRIGHT MFG. CO. LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES IN THE UNIT).

11288-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. KOPPERS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIPS OF NELSON AND NASSAGAWEYA IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

11293-65-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) v. DUNKER CONSTRUCTION LIMITED (RESPONDENT).

Unit: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11312-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1036 (APPLICANT) v. GERARD BUILDERS OF NORTH BAY LIMITED (RESPONDENT

<u>Unit</u>: "all construction labourers in the employ of the respondent in Range 23, Township 29 and in the Townships immediately adjacent thereto all in the District of Algoma, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

11313-65-R: United Brotherhood of Carpenters and Joiners of America Local # 446 (Applicant) v. Gerard Builders of North Bay Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN RANGE 23, TOWNSHIP 29 AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ALL IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11314-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. PROTECTIVE PLASTICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF."

(64 EMPLOYEES IN THE UNIT).

#### CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11147-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. Women's College Hospital (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF ITS HOSPITAL AT TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (10 EMPLOYEES IN THE UNIT).

Number of names of persons on revised voters! List

Number of persons who cast ballots 7

Number of ballots marked in favour 6

Number of ballots marked in favour 7

Of applicant 6

Number of ballots marked in favour 1

11156-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. GENERAL MILLS CEREALS, LTD. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT METROPOLITAN TORONTO."
(4 EMPLOYEES IN THE UNIT).

Number of names of persons on voters\*

LIST

Number of persons who cast ballots

Number of ballots marked in favour

of applicant

L

Number of Ballots marked in Favour of Intervener

-

#### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10197-65-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) V. THE ONTARIO PAPER COMPANY LIMITED (RESPONDENT) V. INT'L BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232 (INTERVENER #2) V. LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS (INTERVENER #3).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE STEAM PLANT OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT SUPERVISORY FOREMEN AND THOSE ABOVE THE RANK OF SUPERVISORY FOREMAN." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED			
VOTERS! LIST			30
NUMBER OF PERSONS WHO CAST BALLOTS		30	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	16		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERNATIONAL BROTHERHOOD OF			
FIREMEN AND OILERS, LOCAL 329	13		
	13		

(SEE INDEXED ENDORSEMENT PAGE 696 ).

10961-65-R: International Printing Pressmen's and Assistants' Union of North America (Applicant) v. Northern Printing Company (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS EMPLOYED IN THE PRESS-ROOM FOR WHOM THE APPLICANT IS THE BARGAINING AGENT." (6 EMPLOYEES IN THE UNIT).

NUMBER	OF	NAMES OF PERSONS ON VOTERS!	LIST			4
NUMBER	0F	PERSONS WHO CAST BALLOTS			4	
NUMBER	OF	BALLOTS MARKED IN FAVOUR OF				
APPL1	CAN	Г		4		
Number	OF	BALLOTS MARKED AGAINST				
APPLIC	CAN	г		0		

(SEE INDEXED ENDORSEMENT PAGE 742).

11097-65-R: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Ekco Products Company (Canada) Limited (Respondent) v. District 50, United Mine Workers of America Local 14234 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, GUARDS AND OFFICE STAFF." (136 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED			
VOTERS' LIST			118
NUMBER OF PERSONS WHO CAST BALLOTS		118	
NUMBER OF SPOILED BALLOTS	3		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	80		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERVENER	35		

### APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

### No Vote Conducted

8973-64-R: Local No. 1, Candian Union of Public Employees (Applicant) v. The Toronto Electric Commissioners (Respondent) v. Toronto Hydro-Electric System, Committee of Staff Employee Representatives (Intervener) (656 employees).

(SEE INDEXED ENDORSEMENT PAGE 687).

10452-65-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Pre-Con Murray Limited (Respondent) v. International Hod Carriers' Building and Common Labourers' Union of America, Local 506 (Intervener). (9 employees).

10469-65-R: Local 570 International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. The Dehavilland Aircraft of Canada Limited (Respondent). (72 employees).

"BY LETTER DATED JANUARY 18TH, 1965 THE APPLICANT HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION."

10954-65-R: International Chemical Workers Union (Applicant) v. Union Gas Company of Canada Limited (Respondent) v. Oil, Chemical and Atomic Workers International Union (Intervener). (47 employees).

"THE INTERVENER HAS REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE INTERVENER HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION.

THE ATTENTION OF THE PARTIES IS DRAWN TO THE MATHIAS QUELLETTE CASE, (1955) C.C.H. CANADIAN LAW REPORTS, TRANSFER BINDER 155-159, 916,026, C.L.S. 76-485."

11217-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. W.R. GRACE & COMPANY OF CANADA LTD. (RESPONDENT). (4 EMPLOYEES).

"THE APPLICANT APPLIED ON DECEMBER 17th, 1965, TO BE CERTIFIED AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT BRANTFORD.

THE RESPONDENT AND THE TEXTILE WORKERS UNION OF AMERICA ARE PARTIES TO A COLLECTIVE AGREEMENT ENTERED INTO AS OF JUNE 26TH, 1965 FOR A TERM OF ONE YEAR.

THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE TEXTILE WORKERS UNION OF AMERICA COVERS ALL EMPLOYEES OF THE RESPONDENT AT THE PLANT WITH WHICH WE ARE HERE CONCERNED INCLUDING THE STATIONARY ENGINEERS. THE BOARD THEREFORE FINDS THAT, PURSUANT TO THE PROVISIONS OF SECTION 5 SUBSECTION 2 OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS UNTIMELY.

THIS APPLICATION IS ACCORDINGLY DISMISSED."

11219-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. HOLMES FOUNDRY LIMITED (RESPONDENT). (15 EMPLOYEES).

"FOR THE REASONS GIVEN ORALLY AT THE HEARING AND HAVING REGARD TO THE FACT THAT THE PARTIES AGREED THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE APPLICANT THROUGH ITS LOCAL No. 456, THIS APPLICATION IS TERMINATED."

11220-65-R: THE SUDBURY AND DISTRICT GENERAL WORKERS' UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. CENTRAL SUPERMARKETS LIMITED (ELM STREET 1.G.A.) (RESPONDENT). (76 EMPLOYEES).

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BAR-GAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

THE APPLICATION IS THEREFORE DISMISSED."

11234-65-R: International Woodworkers of America (Applicant) v. Weyerhaeuser Canada Limited (Respondent). (13 employees).

(SEE INDEXED ENDORSEMENT PAGE 747).

11235-65-R: International Printing Pressmen and Assistants' Union of North America, Ottawa Local No. 5 (Applicant) v. Syndicat d'Oeuvres Sociales, Limitée (Respondent) v. Syndicat de l'Industrie de l'Imprimerie, region Ottawa-Hull (Intervener). (10 employees).

(SEE INDEXED ENDORSEMENT PAGE 748).

11246-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union No. 837 (Applicant) v. Tidey Construction Co. Ltd. (Respondent) v. Operative Plasterers and Cement Masons International Assoc. Local 298 (Intervener). (11 employees).

(SEE INDEXED ENDORSEMENT PAGE 749).

#### CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

10905-65-R: United Steelworkers of America (Applicant) v. National Steel Car Corporation Limited (Respondent).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS AND FIRST AID STAFF." (1568 EMPLOYEES).

Number of names of persons on revised	1349
NUMBER OF PERSONS WHO CAST BALLOTS	849
NUMBER OF BALLOTS EXCLUDING SEGREGATED	
BALLOTS CAST BY PERSONS WHOSE NAMES	
APPEAR ON VOTERS! LIST	844
Number of segregated ballots cast by	
PERSONS WHOSE NAMES APPEAR ON VOTERS	
LIST	5
NUMBER OF SEGREGATED BALLOTS CAST BY	
PERSONS WHOSE NAMES DO NOT APPEAR	
ON VOTERS! LIST	9

(BALLOTS NOT COUNTED)

(SEE INDEXED ENDORSEMENT PAGE 738 ).

## CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

50

10381-65-R: SUDBURY MINE, MILL AND SMELTER WORKERS' UNION, LOCAL 598 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) v. THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED (RESPONDENT) v. UNITED STEELWORKERS OF AMERICA (INTERVENER). (15007 EMPLOYEES).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT BOUND BY THE SAID COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, DATED JULY 10TH, 1963."

NUMBER	OF	PERSONS	ON VOTERS! LIST AT		
START	OF	VOTE			14,959
NUMBER	OF	PERSONS	WHO CAST BALLOTS	14,376	
NUMBER	OF	SPOILED	BALLOTS		

BALLOTS SEGREGATED AND NOT COUNTED	33
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6,099
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	8,194

(SEE INDEXED ENDORSEMENT PAGE 698).

10474-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. UNION CARBIDE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CONSUMER PRODUCTS DIVISION AT 805 DAVENPORT ROAD, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND SECURITY GUARDS." (294 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS! LIS	ST		207
NUMBER OF PERSONS WHO CAST BALLOTS		206	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	71		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT	134		

10877-65-R: Hotel and Restaurant Employees and Bartenders' Union Local 604, Peterborough, Ontario (Applicant) v. McGillis Hotel Company Limited (Respondent).

Unit: "ALL BARTENDERS, TAPMEN AND WAITERS EMPLOYED IN THE BEVERAGE ROOMS OF THE RESPONDENT'S HOTEL IN PETERBOROUGH, SAVE AND EXCEPT OWNERS, MANAGER, ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS! LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS		11
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	10	

 $\frac{11090-65-R}{\text{Applicant}}$  : Laundry and Linen Drivers and Industrial Workers Union Local 847 (Applicant) v. Lorimer - Moore Motors Limited (Respondent).

<u>Unit</u>: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND CAR SALESMEN." (4 EMPLOYEES IN THE UNIT).

THE APPLICANT SOUGHT A BARGAINING UNIT OF ALL MECHANICS AND HELPERS OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN THOSE ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND CAR SALESMEN. REPRESENTATIONS OF THE APPLICANT AND PREVIOUS CERTIFICATIONS OF THE APPLICANT TO WHICH THE BOARD WAS DIRECTED DO NOT SUPPORT THE APPLICANT S REQUEST FOR A CRAFT BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON VOTERS! LIST			5
NUMBER OF PERSONS WHO CAST BALLOTS		5	
Number of Ballots Marked in Favour			
OF APPLICANT	2		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT	3		

11129-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 944 (APPLICANT)

v. Whyte Packing Division of the First Co-Operative Packers of Ontario Limited (Respondent) v. Whyte Employee's Association (Intervener).

UNIT: "ALL STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT STRATFORD." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED			
VOTERS! LIST			3
NUMBER OF PERSONS WHO CAST BALLOTS		3	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	0		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF WHYTE EMPLOYEE'S ASSOCIATION	3		

11143-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:C10:CLC. (APPLICANT) v. BROOKSIDE-PRICE'S DAIRY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT OFFICE MANAGER AND THOSE ABOVE THE RANK OF OFFICE MANAGER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS! LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

## APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

11233-65-R: United Steelworkers of America (Applicant) v. Caland Ore Company Limited (Respondent). (25 employees).

11251-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 3227, Affiliated with the Carpenters District Council of Toronto and Vicinity (Applicant) v. Whitney Construction Limited (Respondent). (13 employees).

11281-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 1089 (APPLICANT) v. CHEMICAL CONST. (CANADA) LTD. (RESPONDENT). (11 EMPLOYEES).

11319-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. McKay Cocker Construction Limited (Respondent). (2 EMPLOYEES).

#### APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS

#### DISPOSED OF DURING JANUARY

11085-65-R: Stephen Ruf and Heinz Bergatt (Applicants) v. Shopmen's Local Union No. 734 International Association of Bridge, Structural and Ornamental Iron Workers. AFL-CIO, CLC (Respondent) v. Niagara Structural Steel Co. Ltd. (Intervener). (141 employees).

NUMBER OF NAMES OF PERSONS ON			
REVISED VOTERS' LIST			141
NUMBER OF PERSONS WHO CAST BALLOTS		141	
NUMBER OF SPOILED BALLOTS	1		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF RESPONDENT	12		
NUMBER OF BALLOTS MARKED AGAINST			
RESPONDENT	128		

## APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JANUARY

11179-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Galion Manufacturing of Canada Ltd. (Respondent) v. Galion Employees! Association (Predecessor Trade Union).

(SEE INDEXED ENDORSEMENT PAGE 750).

11185-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) v. ELLENZWEIG BAKERY LIMITED (RESPONDENT).

DECISION OF THE BOARD:

THE BOARD FINDS THAT THE APPLICANT, BY REASON OF A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO-CLC WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN ELLENZWEIG BAKERY LIMITED AND UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO-CLC DATED FEBRUARY 25TH, 1964 AND EFFECTIVE UNTIL FEBRUARY 5TH, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

The Board accordingly declares, pusuant to section 47(1) of The Labour Relations Act, that the applicant has acquired the rights, privileges and duties of United Packinghouse, Food and Allied Workers, AFL-CIO-CLC which was a party to the collective agreement, referred to in paragraph 1, with the respondent.

11260-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL., CLC., CIO., OFL., LOCAL 636 (APPLICANT) v. PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON AND LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS EFFECTIVE FROM APRIL 1ST, 1964 UNTIL MARCH 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11261-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL., CLC., CIO., OFL., LOCAL 636 (APPLICANT) v. PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BURLINGTON AND LOCAL 2019, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS EFFECTIVE FROM JUNE 13TH, 1964 UNTIL MARCH 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11263-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) v. M. LOEB LIMITED, SUDBURY, ONTARIO (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SUDBURY GENERAL WORKERS UNION LOCAL #101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN M. LOEB LIMITED, SUDBURY, ONTARIO AND THE SUDBURY GENERAL WORKERS UNION LOCAL #101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM AUGUST 1ST, 1964 TO JULY 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11264-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) v. BERTRAND BROS., SUDBURY, ONTARIO (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SUDBURY GENERAL WORKERS UNION, LOCAL #101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN BERTRAND BROSS, SUDBURY, ONTARIO AND THE SUDBURY GENERAL WORKERS UNION, LOCAL #101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM OCTOBER 1ST, 1964 TO SEPTEMBER 30TH, 1965 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11265-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT)
v. NORTHERN FOODMARTS LIMITED, SUDBURY (RESPONDENT).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SUDBURY GENERAL WORKERS' UNION LOCAL No. 101, CANADIAN LABOUR CONGRESS WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN NORTHERN FOODMARTS LIMITED, SUDBURY AND THE SUDBURY GENERAL WORKERS' UNION LOCAL No. 101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM SEPTEMBER 1ST, 1964 TO AUGUST 31ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11266-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) v. Provincial Fruit Company (Sudbury) Limited, Sudbury, Ontario (Respondent).

DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF SUDBURY GENERAL WORKERS¹ UNION LOCAL 101, CANADIAN LABOUR CONGRESS, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN PROVINCIAL FRUIT COMPANY (SUDBURY) LIMITED, SUDBURY, ONTARIO, AND SUDBURY GENERAL WORKERS¹ UNION LOCAL 101, CANADIAN LABOUR CONGRESS EFFECTIVE FROM JANUARY 1ST, 1965 TO DECEMBER 31ST, 1967 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

11267-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL: CIC:CLC. (APPLICANT V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

#### DECISION OF THE BOARD:

HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF SUDBURY & GENERAL WORKERS' UNION, Local 101, Canadian Labour Congress, which was the Bargaining agent for a unit of employees of the respondent defined in a collective agreement between National Grocers Company Limited and Sudbury & General Workers' Union, Local 101, Canadian Labour Congress which is in effect until July 30th, 1967 and From Year to Year Thereafter Subject to Notice.

#### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JANUARY

10608-65-U: THE ONTARIO PAPER COMPANY LIMITED (APPLICANT) v. T. WAINMAN, ET AL (RESPONDENTS). (WITHDRAWN).

10609-65-U: THE ONTARIO PAPER COMPANY LIMITED (APPLICANT) V. LOCAL 101, UNITED PAPERMAKERS AND PAPER WORKERS (RESPONDENT). (WITHDRAWN).

11317-65-U: SCM (CANADA) LIMITED (APPLICANT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA. AND ITS LOCAL 514 (RESPONDENT). (WITHDRAWN).

## APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

10613-65-U: THE ONTARIO PAPER COMPANY LIMITED (APPLICANT) v. T. WAINMAN, J. BURTON, G. NELSON, E. CAHILL, R. DEEKER AND J. THEISEN (RESPONDENTS). (WITHDRAWN).

## COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING JANUARY

10861-65-U: Local 636 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC (Complainant) v. TR Services Limited (Respondent).

11042-65-U: L. U. 636 - INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL.CIC (COMPLAINANT) v. TR SERVICES LIMITED (RESPONDENT).

11175-65-U: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and Local 641 (Complainant) v. Electronic Materiels of Canada Limited (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 752).

11178-65-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. WILSON-HINSCHBERGER LIMITED (RESPONDENT).

 $\frac{11250-65-U}{\text{IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) } \textbf{v.} \text{ Holmes Foundry Ltd.}}{\text{(Respondent).}}$ 

11262-65-U: L.U. 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. C.I.O. C.L.Q. O.F.L. (COMPLAINANT) v. TR SERVICES LIMITED (RESPONDENT).

## APPLICATION UNDER SECTION 47A DISPOSED OF DURING JANUARY

11104-65-M: THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:C10:CLC, AND ITS Local 440 (APPLICANT) v. THE BORDEN COMPANY LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES UNION, LOCAL 647, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS LONDON DIVISION AT LONDON, SAVE AND EXCEPT MANAGERS, ROUTE FOREMEN, PERSONS ABOVE THE RANKS OF MANAGER AND ROUTE FOREMAN AND OFFICE STAFF."

Number of names of persons on revised voters! List
Number of persons who cast ballots
Number of ballots marked in favour of applicant
Number of ballots marked in favour of intervener

84

7

64

(SEE INDEXED ENDORSEMENT PAGE 753).

## APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) 3 SPOSED OF DURING JANUARY

11113-65-M: INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL UNION 697 (TRADE UNION) v. Taylor Woodrow Installations Limited (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 772 ).

11254-65-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, CONTRACTING BY ITS LOCAL 796 (TRADE UNION) v. KING-YONGE-YARMON LEASEHOLD PARTNERSHIP (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 774).

## REFERENCE TO BUARD PUREJANT TO SECTION 794 STITHE ACT DISPOSED OF JURING JANUARY

11076-65-M: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (TRADE UNION) v. UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 767).

#### APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

10906-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ESSEX WIRE CORPORATION LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION 141 (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 775 ).

11098-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) V. IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 779).

11066-65-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. K. MELHORN (RESPONDENT). (REQUEST DENIED).

11121-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. PERCHUK LUMBER (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 780 ).

### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

11118-65-U: FRANK KUNTZ (COMPLAINANT) V. PITT STREET HOTEL LTD. (KING GEORGE HOTEL) (RESPONDENT). (REQUEST DENIED).

#### INDEXED ENDORSEMENTS - CERTIFICATION

8973-64-R: Local No. 1, Canadian Union of Public Employees (Applicant) v. The Toronto Electric Commissioners (Respondent), Toronto Hydro-Electric System, Tommittee of Staff Employee Representatives (Intervener), Group of Employees (Objectors).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members E. Boyer and H. F. Irwin.

APPEARANCES AT THE HEARING: D. LEWIS, Q.C., W. BAKER AND C. MACKAY FOR THE APPLICANT, J. T. WEIR, Q.C., J. A. BRIDGES, I. ELLIS, S. P. WEBB AND M. A. MCQUAID FOR THE RESPONDENT, W. A. LITTLE AND D. L. NEWMAN FOR THE INTERVENER, A. MACDONALD, R. A. MIGHTON, D. E. TOOGOOD, E. D. STRAIT, A. B. CORDES, T. E. ROWLAND AND V. G. SMART FOR A GROUP OF EMPLOYEES.

DECISION OF: J. H. BROWN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN: (JANUARY 21, 1966.)

1. The Board finds that the applicant is a trade union within the meaning of section l(1)(J) of the Labour Relations Act.

THE APPLICANT IS APPLYING FOR THE FOLLOWING UNIT OF EMPLOYEES OF THE RES-PONDENT WHICH THE APPLICANT CLAIMS IS APPROPRIATE FOR COLLECTIVE BARGAINING:

ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THOSE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, FOREMEN AND SUPERVISORS, AND THOSE ABOVE THE RANK OF FOREMAN OR SUPERVISOR, STATIONARY ENGINEERS AND THEIR

HELPERS, OFFICE AND CLERICAL STAFF, SALES STAFF, DESIGNERS, DRAFTSMEN, SURVEYORS, TECHNICAL FIELDMEN, ENGINEERING ASSISTANTS, TECHNICAL ASSISTANTS, LIGHTING SERVICE REPRESENTATIVES, POWER REPRESENTATIVES, TECHNICAL REPRESENTATIVES, ELECTRIC SERVICE REPRESENTATIVES, AND ADVERTISING AND DISPLAY PERSONNEL.

3. THE RESPONDENT CLAIMS THAT THE ONLY UNIT OF ITS EMPLOYEES WHICH IS APPROPRIATE FOR COLLECTIVE BARGAINING IS AS FOLLOWS:

ALL STAFF EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE EXECUTIVE GENERAL OFFICE STAFF, THE PERSONNEL OFFICE STAFF, THE CLAIMS OFFICE STAFF, MANAGERS, ASSISTANT MANAGERS, SUPERVISORS AND ASSISTANT EXECUTIVES, FOREMEN AND OTHER EMPLOYEES PERFORMING FOREMAN'S FUNCTIONS, PROFESSIONAL ENGINEERS, CONFIDENTIAL SECRETARIES TO THE MANAGERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD.

- The applicant is the bargaining agent for a unit of employees of the respondent consisting of all hourly rated employees. That is to say, no salaried occupational classifications are included in the bargaining unit. The applicant submits that the bargaining unit which it is seeking in the instant application may be termed as a tag-end unit, consisting of occupational classifications whose work would have brought them within the bargaining unit already represented by the applicant, were there not the distinction between hourly rated and salaried employ-ees. More specifically, the applicant submits that the appropriate bargaining unit with respect to the instant application is one which includes all manual employees not already represented by the applicant and excludes all office clerical, planning, designing, drafting, sales and promotion employees who would normally fall within an office, clerical and technical bargaining unit.
- The respondent submits that the unit of employees for whom the applicant already is the bargaining agent are engaged in the "construction" operations of the respondent and have a community of interests separate and apart from the other employees of the respondent. The respondent further submits that the bargaining unit proposed by the applicant is not a functional tag end because of the diversified duties and responsibilities of the employees concerned. The respondent finally submits that the unit of employees proposed by the applicant is not appropriate to the respondent's organization as it cuts across departmental lines of work, promotional opportunities and in-training programmes.
- 6. THE BOARD DOES NOT PROPOSE TO DEAL WITH EACH AND EVERY CLASSIFICATION INDIVIDUALLY. A REVIEW, HOWEVER, OF THE OCCUPATIONS AND CORRESPONDING JOB FUNCTIONS OF THOSE EMPLOYEES INCLUDED IN THE BARGAINING UNIT ALREADY REPRESENTED BY THE APPLICANT SHOW THAT A MAJORITY OF THESE EMPLOYEES ARE ENGAGED IN MANUAL CONSTRUCTION, INSTALLATION, MAINTENANCE AND REPAIR WORK RELATING TO THE BASIC EQUIPMENT OF THE RESPONDENT'S SYSTEM, 1.E., CONDUITS AND CABLES, POLES AND LINES, MANHOLES, VAULTS

AND TRANSFORMERS. MOST OF THE BALANCE OF THE EMPLOYEES IN THIS BARGAINING UNIT DO JOBS WHICH ARE AN ADJUNCT TO THE ABOVE WORK, SUCH AS THE SUPPLY AND DELIVERY OF MATERIALS AND EQUIPMENT. THE REMAINING EMPLOYEES IN THE BARGAINING UNIT ARE ENGAGED IN WORK WHICH RELATES TO THE EXTERNAL CONSTRUCTION, MAINTENANCE AND REPAIR OF THE PHYSICAL PROPERTIES OWNED BY THE RESPONDENT.

- 7. THE JOB FUNCTIONS OF SOME CLASSIFICATIONS WHICH THE APPLICANT WANTS TO INCLUDE IN ITS PROPOSED BARGAINING UNIT ARE SIMILAR TO THOSE PERFORMED BY PERSONS IN THE EXISTING BARGAINING UNIT. THE MOST PROMINENT OF THESE ARE MAINTENANCE AND STOCKKEEPING EMPLOYEES. THE DISTINGUISHING FEATURE BETWEEN THE MAINTENANCE EMPLOYEES NOW REPRESENTED BY THE APPLICANT AND THOSE WHICH IT IS SEEKING IS THAT THE FORMER DO OUTSIDE MAINTENANCE ON THE RESPON-DENT'S PREMISES AND AT THE SITES OF INSTALLATION AND REPAIR WORK ON THE SYSTEM ITSELF, WHEREAS THE LATTER DO CLEANING AND MAINTENANCE WORK INSIDE THE BUILDING PREMISES OF THE RESPONDENT. THE BOARD IN THE VAST MAJORITY OF CASES HAS REFUSED TO GRANT SEPARATE BARGAINING RIGHTS FOR MAINTENANCE PERSONNEL AND HAS INCLUDED THEM IN UNITS WITH OTHER PLANT EMPLOYEES. THE FEW EXCEPTIONS TO THIS PRACTICE ARE WHERE AN ESTABLISHED HISTORY OF SEPARATE BARGAINING HAS BEEN DEMONSTRATED. IN THE CASE OF STOCKKEEPERS WE ARE NOT AWARE OF ANY CASE WHERE THE BOARD HAS FOUND THESE TYPES OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING EITHER BY THEMSELVES OR TOGETHER WITH MAINTENANCE EMPLOYEES. INVARIABLY THEY ARE INCLUDED IN "ALL EMPLOYEE" UNITS.
- 8. THE APPLICANT IS SEEKING TO INCLUDE IN ITS PROPOSED UNIT EMPLOYEES WITH A VARIETY OF JOB TITLES AND DUTIES, WHO CAN GENERALLY BE DESCRIBED AS FIELD-MEN. THE BASIC FUNCTIONS OF THESE EMPLOYEES CAN LARGELY BE DESCRIBED AS MAKING TESTS ON EQUIPMENT AND INVESTIGATING COMPLAINTS OF CUSTOMERS. SOME OF THEM EVEN ADVISE CUSTOMERS AND DO LIASON WORK WITH CONTRACTORS. THE AMOUNT OF ACTUAL PHYSICAL WORK THEY DO IS INSIGNIFICANT AND ACCORDINGLY THEY CANNOT BE CLASSIFIED AS "MANUAL" WORKERS IN ANY REAL SENSE OF THAT WORD. THE SAME IS TRUE OF THE METER READERS WHOM THE APPLICANT IS ALSO SEEKING TO INCLUDE IN ITS PROPOSED UNIT.
- 9. THERE ARE ALSO SERVICE REPAIRMEN AND ELECTRICIANS WHO ARE CLAIMED BY THE APPLICANT. THESE EMPLOYEES INSTALL AND REPAIR ELECTRICAL AND PLUMBING EQUIPMENT ON THE PREMISES OF CUSTOMERS OF THE RESPONDENT. WHILE THEY PERFORM MANUAL FUNCTIONS THEY WORK UNDER THE SUPERVISION AND DIRECTION OF FIELDMEN, TECHNICAL FIELDMEN OR TECHNICAL ASSISTANTS IN THEIR RESPECTIVE DEPARTMENTS. IN OUR VIEW, THEIR COMMUNITY OF INTERESTS LIES MORE WITH THE EMPLOYEES IN THEIR OWN DEPARTMENTS THAN WITH THE MANUAL EMPLOYEES NOW REPRESENTED BY THE APPLICANT.
- 10. THE TECHNICAL FIELDMEN AND TECHNICAL ASSISTANTS REFERRED TO IN THE PREVIOUS PARAGRAPH ARE HIGHLY TRAINED EMPLOYEES. THEIR JOB FUNCTIONS ARE CONCERNED WITH INVESTIGATION AND PLANNING. AS A GENERAL RULE, BUT SUBJECT TO EXCEPTIONS, THE TECHNICAL FIELDMEN MAKE INVESTIGATIONS AND DO PLANNING IN THE FIELD, WHEREAS THE LATTER DO SIMILAR WORK IN THE OFFICE. THERE IS, HOWEVER, NO CLEAR CUT LINE BETWEEN THE TWO CLASSIFICATIONS AS EMPLOYEES IN BOTH CLASSIFICATIONS USUALLY SPEND SOME TIME IN THE FIELD AND SOME TIME IN THE OFFICE. ALTHOUGH THESE EMPLOYEES CLEARLY ARE NOT MANUAL EMPLOYEES, THE APPLICANT CLAIMS THAT THOSE WHO DO THEIR WORK PRIMARILY IN THE FIELD ARE APPROPRIATE FOR INCLUSION IN ITS PROPOSED BARGAINING UNIT, WHILE THOSE WHO DO THEIR WORK PRIMARILY IN THE OFFICE ARE NOT. BECAUSE OF THE DIFFICULTY IN DISTINGUISHING BETWEEN THOSE WHO SHOULD OR SHOULD NOT BE INCLUDED ON THE BASIS OF JOB TITLES, HOWEVER, THE APPLICANT HAS TAKEN THE POSITION THAT IT

IS PREPARED TO EXCLUDE ALL OF THE EMPLOYEES IN BOTH CLASSIFICATIONS.

- THERE ARE, IN ADDITION, EMPLOYEES SUCH AS POWER, SALES AND SERVICE REPRESENTATIVES WHO DEAL DIRECTLY WITH THE CUSTOMERS AND POTENTIAL CUSTOMERS OF THE RESPONDENT. THESE EMPLOYEES MAKE ESTIMATES OF THE REQUIREMENTS OF CUSTOMERS FOR THEIR PARTICULAR PREMISES AND DIVIDE THEIR TIME BETWEEN THE FIELD AND THE OFFICE. THE APPLICANT SEEKS TO EXCLUDE THESE CLASSIFICATIONS FROM ITS PROPOSED BARGAINING UNIT ON THE BASIS THAT THEY ARE ENGAGED IN A SALES FUNCTION. WE FIND, HOWEVER, THAT THESE EMPLOYEES HAVE A DEFINITE COMMUNITY OF INTERESTS WITH THE TECHNICAL ASSISTANTS, TECHNICAL FIELDMEN AND FIELDMEN. SOME OF WHOM THE APPLICANT CLAIMS ARE APPROPRIATE FOR INCLUSION IN ITS PROPOSED BARGAINING UNIT. SIMILARLY, WE NOTE THAT WHILE THE APPLICANT SEEKS THE INCLUSION OF FIELD REPAIRMEN, IT WISHES TO EXCLUDE THE DESPATCH CLERK WHO RELAYS THE CONSUMER CALLS TO THE FIELD ON THE BASIS THAT THE LATTER PERFORMS A CLERICAL FUNCTION, DESPITE THE ABVIOUS COMMUNITY OF INTERESTS OF THESE EMPLOYEES. WE WOULD MENTION THAT IN ONE DEPARTMENT WHERE THE SERVICEMEN AND DESPATCH CLERKS INTERCHANGE THEIR JOBS ON A ROTATING BASIS THE APPLICANT WANTS ALL OF THESE EMPLOYEES.
- IN PARAGRAPH 7 THE BOARD REFERRED TO A COMMUNITY OF INTERESTS OF MAINTENANCE AND STOCKKEEPING PERSONNEL WITH THOSE EMPLOYEES IN THE EXISTING BARGAINING UNIT ON THE BASIS THAT THEY ALL PERFORM MANUAL FUNCTIONS. IN ADDITION TO THE FACT THAT THE BOARD GENERALLY HAS NOT FOUND THESE CLASSIFICATIONS AS GROUPS APPROPRIATE FOR COLLECTIVE BARGAINING. THERE ARE OTHER FACTORS IN THE INSTANT CASE WHICH MITIGATE AGAINST THE BOARD FINDING THEM TO BE AN APPROPRIATE "TAG-END" UNIT. WE WOULD POINT OUT THAT THE STOCKKEEPERS AND EMPLOYEES IN SIMILAR CATEGORIES ARE SCATTERED THROUGHOUT THE RESPONDENT'S ORGANIZATION IN VARIOUS DEPARTMENTS. AND WHILE A MAJORITY OF THE MAINTENANCE PERSONNEL ARE IN A SINGLE DEPARTMENT, SOME OF THEM ARE ATTACHED TO SEPARATE DEPARTMENTS. EVEN ASSUMING, HOWEVER. THAT THE MAINTENANCE OR STOCKKEEPING EMPLOYEES ARE A COHESIVE GROUP, WE ARE APPREHENSIVE THAT A DETERMINATION THAT THEY FORM A SEPARATE BARGAINING UNIT WOULD LEAD TO AN UNDESIRABLE FRAGMENTATION OF BARGAINING RIGHTS THROUGHOUT THE RESPONDENT'S WHOLE ORGANIZATION.
- THE ONLY OTHER EMPLOYEES SOUGHT BY THE APPLICANT WHO CAN TRULY BE CLASSIFIED AS MANUAL WORKERS ARE A NUMBER OF INSTALLATION AND REPAIR EMPLOYEES. AS HAS BEEN MENTIONED ALREADY, THEIR REAL COMMUNITY OF INTERESTS IS NOT WITH THE OUTSIDE MANUAL EMPLOYEES WHO THE APPLICANT REPRESENTS, BUT WITH THE EMPLOYEES IN THEIR OWN DEPARTMENT. FURTHER, AS IN THE CASE OF THE STOCKKEEPERS, THEY ARE EMPLOYED IN DEPARTMENTS THROUGH OUT THE RESPONDENT'S ORGANIZATION ACCORDING TO THE SKILLS REQUIRED BY VARIOUS DEPARTMENTS. THE REMAINING CLASSIFICATION WHICH THE APPLICANT IS SEKKING THAT MIGHT BE CONSIDERED AS "MANUAL" ARE PRINTERS, WHO SPEND ALL THEIR TIME IN THE OFFICE. THESE EMPLOYEES CERTAINLY DO NOT DO MANUAL WORK OF THE SAME NATURE AS THE EMPLOYEES REPRESENTED BY THE APPLICANT AND WE CAN SEE NO COMMUNITY OF INTERESTS BETWEEN THEM.
- 14. THE EMPLOYEES IN ALL OTHER CLASSIFICATIONS SOUGHT BY THE APPLICANT DO NOT HAVE "MANUAL" FUNCTIONS AS WE UNDERSTAND THE

WORD. ACCORDINGLY, WITH RESPECT TO THESE EMPLOYEES, THE WHOLE BASIS OF THE APPLICANT'S ARGUMENT FOR THEIR INCLUSION IN ITS PROPOSED BARGAINING UNIT CANNOT BE SUPPORTED. WE WOULD MENTION THAT BECAUSE MOST OF THESE EMPLOYEES WORK IN THE FIELD IT DOES NOT. IN OUR VIEW. GIVE THEM A COMMUNITY OF INTEREST WITH THE EMPLOYEES IN THE EXISTING BARGAINING UNIT. MOREOVER, THE BOARD IS UNABLE TO DRAW ANY LOGICAL OR RECOGNIZABLE LINE BETWEEN EMPLOYEES IN THE HIGHLY SKILLED OCCUPATIONAL CLASSIFICATIONS WHICH THE APPLICANT SEEKS TO INCLUDE, AND THOSE IN THESE CLASSIFICATIONS WHICH IT SEEKS TO EXCLUDE FROM ITS PROPOSED BARGAINING UNIT. FINALLY, AND OF GREAT WEIGHT IN THE BOARD'S DELIBERATION. IS THE FACT THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT CUTS RIGHT ACROSS DEPARTMENTAL LINES IN A MANNER WHICH, IN OUR OPINION, IS LIABLE TO RESULT IN A SERIOUS DISRUPTION OF THE RESPONDENT'S OPERATION INCLUDING ITS ENTIRE PATTERN OF ORGANIZATION.

- BARGAINING UNIT ONLY INCLUDES WHOLE DEPARTMENTS, ALTHOUGH OF COURSE THERE ARE OFFICE AND CLERICAL PERSONNEL WHO SERVICE THE NEEDS OF THESE DEPARTMENTS. WE WOULD MENTION ALSO THAT IN ESTABLISHING ITS EXISTING BARGAINING RIGHTS, THE APPLICANT ACCEPTED THE ORGANIZATIONAL STRUCTURE OF THE RESPONDENT. THAT IS TO SAY, IT AGREED WITH THE RESPONDENT THAT ITS BARGAINING RIGHTS WOULD ONLY INCLUDE THOSE EMPLOYEES WHO ARE PAID ON AN HOURLY BASIS. HAVING MADE AND LIVED WITH THAT AGREEMENT FOR MANY YEARS, THE POSITION TAKEN BY THE APPLICANT THAT IT CAN NOW ORGANIZE ON A BASIS WHICH COMPLETELY DISREGARDS THE RESPONDENT SPATTERN OF ORGANIZATION HAS LESS LEIGHT THAN IT OTHERWISE MIGHT HAVE HAD.
- 16. HAVING CONSIDERED THE WRITTEN AND ORAL REPRESENTATIONS OF THE PARTIES AND HAVING CAREFULLY STUDIED THE REPORT OF THE EXAMINER IN THIS MATTER TOGETHER WITH THE ATTACHED EXHIBIT AND OTHER MATERIAL FILED WITH THE BOARD. WE FIND THAT THE UNIT OF EMPLOYEES OF THE RESPONDENT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. IN VIEW OF THE LENGTH OF TIME AND THE EXTENSIVE NATURE OF THE INQUIRIES WHICH WERE MADE WITH RESPECT TO A BARGAINING UNIT IN THIS CASE, IT WOULD SEEM DESIRABLE THAT THE BOARD DETERMINE WHAT IS AN APPROPRIATE BARGAINING UNIT. THE PARTIES TO THIS APPLICATION, HOWEVER, ALMOST EXCLUSIVELY DIRECTED THEIR ENQUIRY BEFORE THE EXAMINER AND THEIR REPRESENTATIONS TO THE BOARD ITSELF TO THE QUESTION OF THE APPROPRIATENESS OR THE INAPPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT. ACCORDINGLY, ON THE EVIDENCE BEFORE US WE ARE NOT IN A POSITION TO MAKE A FINDING AS TO WHETHER THE BARGAINING UNIT PROPOSED BY THE RESPONDENT OR WHAT OTHER BARGAINING UNIT WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING.
- 17. THE LIST FILED WITH THE BOARD BY THE RESPONDENT CONTAINS THE NAMES OF 656 EMPLOYEES. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 154 EMPLOYEES. WHILE THE BOARD IS NOT PREPARED TO MAKE ANY FINDING AS TO AN APPROPRIATE BARGAINING UNIT, IT IS SATISFIED THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN

FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT PROPOSED BY THE RESPONDENT OR IN ANY LESSER UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

18. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: (JANUARY 21, 1966.)

| DISSENT.

WHILE I HAVE SOME DIFFICULTY IN DRAWING A LINE ON THE BASIS OF JOB FUNCTIONS BETWEEN THE MORE HIGHLY TRAINED TECHNICAL OCCUPATIONAL CLASSIFICAT-IONS WHICH THE APPLICANT IS SEEKING TO INCLUDE IN ITS PROPOSED BARGAINING UNIT, AND THE OFFICE, CLERICAL AND SALES STAFF WHICH THE APPLICANT WISHES TO EXCLUDE FROM ITS UNIT, I AM SATISFIED THAT AT THE VERY MINIMUM THE APPLICANT IS ENTITLED TO A SEPARATE OR TAG END UNIT TO THE EXISTING BARGAINING UNIT COMPOSED OF ALL MAINTENANCE PERSONNEL. ACCORDINGLY, I WOULD HAVE FOUND SUCH A UNIT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN MY VIEW, BY DENYING THE APPLICANT THE BARGAINING UNIT WHICH IT IS SEEKING, THE MAJORITY, IN EFFECT, ARE ALSO SAYING THAT A UNIT OF OFFICE EMPLOYEES IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

10197-65-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) v. THE ONTARIO PAPER COMPANY LIMITED (RESPONDENT), INT'L BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329 (INTERVENER #1), INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232 (INTERVENER #2), AND LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS (INTERVENER #3).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: I. SCOTT AND M. A. HEELEY FOR THE APPLICANT, S. K. LEARIE, Q.C., C. D. BANNWELL, J. A. CARPENTER AND W. J. HAMMOND FOR THE RESPONDENT, A. THURSTON, L. INGLE AND W. R. TOWNSEND FOR THE INTERVENER, INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, R. HILL AND J. WEDGE FOR THE INTERVENER, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232, AND H. J. BURKE FOR THE INTERVENER, LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS.

DECISION OF THE BOARD: (NOVEMBER 9, 1965.)

The applicant has applied for certification as bargaining agent for a bargaining unit of employees of the respondent company comprising "all stationary engineers and helpers employed by the respondent at Thorold, Ontario, save and except the chief engineer and those above the rank of chief engineer". The respondent and the intervener, International Brotherhood of Firemen and Oilers, Local 329, hereinafter referred to as the "Firemen and Oilers Union", oppose the application. The international Union of Operating Engineers, Local 232, and the United Association of Plumbers and Steamfitters, Local 423, also intervened, but it became apparent in the early stages of the hearings held in connection with this application that the applicant was not seeking to represent any employees represented by these two last-named unions; it was seeking to

REPLACE THE FIREMEN AND OILERS UNION AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES FOR WHOM IT CLAIMED. THAT UNION IS PRESENTLY THE BARGAINING AGENT.

ON AN APPLICATION MADE BY THE PARENT BODY OF THE APPLICANT HEREIN. NAMELY, THE CANADIAN UNION OF OPERATING ENGINEERS, IN 1961, THE BOARD FOUND THAT A GROUP OF TRADE UNIONS, WHICH DID NOT CONSTITUTE A COUNCIL OF TRADE UNIONS AND WHICH INCLUDED ALL THREE UNIONS THAT INTERVENED IN THESE PROCEED-INGS AS WELL AS A NUMBER OF OTHERS, HAD JOINTLY ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT COMPANY WHEREIN. AS THE BOARD FOUND. THEY 11 JOINTLY REPRESENTED THE EMPLOYEES IN ONE COMPOSITE BARGAINING UNIT DEFINED THEREIN AS THE EMPLOYEES OF THE COMPANY'S PLANT AT THOROLD'II. WITH EXCEPTIONS THAT ARE NOT MATERIAL TO THIS CASE. THE BOARD FURTHER FOUND IN THAT CASE, THAT, BECAUSE OF THE TERMS OF THE COLLECTIVE AGREEMENT JUST REFERRED TO, THE EMPLOYEES ON WHOSE BEHALF THE APPLICANT IN THAT CASE WAS SEEKING CERTIFICATION FELL WITHIN THE CONCLUDING PORTION OF SUBSECTION 2 OF SECTION 6 OF THE LABOUR RELATIONS ACT AND THAT ACCORDINGLY. IN DETERMINING THE APPROPRIATENESS OF THE BARGAINING UNIT, THE BOARD WAS REQUIRED TO APPLY NOT THE MANDATORY PROVISIONS SET OUT IN THE FIRST PART OF SUBSECTION 2 OF SECTION 6 OF THE ACT BUT THE DISCRETIONARY POWERS CONFERRED BY THE CONCLUDING WORDS OF THAT SUBSECTION. IN THE RESULT, THE BOARD FOUND THAT THE UNIT PROP-OSED BY THE APPLICANT IN THAT CASE WAS NOT APPROPRIATE AND THE APPLICATION WAS DISMISSED.

COUNSEL FOR THE APPLICANT NOW CONTENDS THAT THERE HAS BEEN A SUBSTANTIAL ALTERATION IN THE RELATIONSHIP BETWEEN THE FIREMEN AND OILERS UNION AND THE OTHER UNIONS AND THE RESPONDENT COMPANY WITHIN THE PAST YEAR AND THAT THE CONCLUSIONS REACHED BY THE BOARD IN THE EARLIER CASE ARE NOT APPLICABLE TO THE CONDITIONS THAT NOW PREVAIL. AN ANALYSIS OF THE EVIDENCE RELATING TO THE RELATIONSHIP BETWEEN THE COMPANY AND THE VARIOUS UNIONS CONCERENED IS THEREFORE IN ORDER.

On May 1st. 1963. AN AGREEMENT WAS ENTERED INTO BETWEEN THE COMPANY. ON THE ONE HAND, AND THE FOLLOWING UNIONS ON THE OTHER HAND, NAMELY: UNITED PAPERMAKERS AND PAPERWORKERS, LOCAL 101; THE INTERNATIONAL BROTHERHOOD OF Pulp, Sulphite and Paper Mill Workers, Local 84; The International Brotherhood of Electrical Workers, Local 914; The International Association of Machinists, Local 268: The International Brotherhood of Firemen and Oilers, Local 329: The United Association of Plumbers and Steamfitters, Local 413; The International UNION OF OPERATING ENGINEERS, LOCAL 232; THE UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1677; AND THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1477. IN THAT AGREEMENT, THE COMPANY RECOGNIZED THE "SIGNATORY UNIONS AS THE SOLE AND EXCLUSIVE BARGAINING REPRESENTATIVES FOR THE PURPOSES OF COLLECTIVE BARGAINING FOR THE EMPLOYEES OF ITS PLANT AT THOROLD, ONTARIO". THE RECOGNIT-ION CLAUSE OF THE AGREEMENT CONTAINED AN EXCLUSIONARY PROVISION WHICH IS NOT HERE MATERIAL. FROM THE EVIDENCE PRESENTED TO US. IT WOULD APPEAR THAT THAT AGREEMENT WAS NEGOTIATED IN THE SAME WAY, AND IT WAS INTENDED BY THE PARTIES TO OPERATE IN THE SAME FASHION. AS THE AGREEMENT DEALT WITH IN THE PREVIOUS APPLICATION .

IN OCTOBER 1964, THE FIREMEN AND OILERS UNION RESOLVED TO WITHDRAW FROM THE "JOINT ENTERPRISE" AND, PRIOR TO THE COMMENCEMENT OF THE NEW YEAR, THAT UNION SO NOTIFIED THE RESPONDENT COMPANY AS WELL AS THE OTHER MEMBERS OF THE JOINT COMMITTEE THAT REPRESENTED THE VARIOUS UNIONS WHICH WERE PARTY TO THE AGREEMENT. WE HAVE NO EVIDENCE BEFORE US THAT, IN THE NEGOTIATIONS

FOR THE RENEWAL OF THE AGREEMENT THAT HAD BEEN ENTERED INTO ON MAY 1st, 1963, AND WHICH REMAINED IN EFFECT UNTIL APRIL 30, 1965, THE SEVERAL UNIONS WENT THEIR OWN WAY, SOME CONTINUING TO BARGAIN AS A GROUP AND SOME BARGAINING ON AN INDIVIDUAL BASIS APART FROM THE OTHER UNIONS. THERE IS NOTHING TO SUGGEST THAT THE COMPANY TOOK ANY OBJECTION AT ANY TIME TO BARGAINING BEING CONDUCTED BY THE VARIOUS UNIONS IN THE MANNER INDICATED. THIS WAS THE SITUATION THAT OBTAINED ON APRIL 1st, 1965, THE DATE WHEN THE INSTANT APPLICATION WAS MADE.

SINCE APRIL 1, THE FOLLOWING AGREEMENTS HAVE BEEN ENTERED INTO BY THE COMPANY: AN AGREEMENT DATED AUGUST 20, 1965 WITH "THE FOLLOWING JOINT UNIONS: THE INTERNATIONAL ASSOCIATION OF MACHINISTS - LOCAL 268. THE UNITED ASSOCIATION OF PLUMBERS AND STEAMFITTERS - LOCAL 413, THE INTERNATIONAL UNION OF OPERATING ENGINEERS - LOCAL 232, THE UNITED BROTHERHOOD OF CARPENTERS - LOCAL 1677, THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION - LOCAL 1477"; AN AGREEMENT DATED August 28, 1965 with International Brotherhood of Pulp, Sulphite and Paper Mill Workers Local 84; an agreement dated October 20, 1965 with United Papermakers AND PAPERWORKERS LOCAL 101; AN AGREEMENT DATED OCTOBER 20, 1965, WITH INTER-NATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 914. AT THE HEARING IN THIS MATTER ON SEPTEMBER 29, 1965, WE WERE INFORMED THAT NEGOTIATIONS HAD BEEN CONCLUDED BETWEEN THE COMPANY AND THE TWO LAST-MENTIONED UNIONS BUT THAT THE AGREEMENTS HAD NOT BEEN EXECUTED AT THAT TIME. COUNSEL AGREED THAT THE SEVERAL AGREEMENTS WOULD BE FILED WITH THE BOARD AFTER THE HEARING AND COPIES OF ALL THESE AGREEMENTS HAVE NOW BEEN SUBMITTED TO US. NO NEW AGREEMENT AND NO RENEWAL OF THE PREVIOUS AGREEMENT HAS BEEN ENTERED INTO BETWEEN THE COMPANY AND THE FIREMEN AND OILERS UNION; INDEED, THAT UNION HAS NOT YET SUBMITTED ITS "DEMANDS" TO THE COMPANY. EACH OF THE FOUR AGREEMENTS ENTERED INTO BETWEEN THE COMPANY AND THE VARIOUS UNIONS REFERRED TO ABOVE COMMENCE WITH THE FOLLOW-ING STATEMENT:

THE ABOVE-MENTIONED PARTIES HAVING MET IN NEGOTIATIONS AGREE TO RENEW THE COLLECTIVE LABOUR AGREEMENT FOR A PERIOD OF THREE YEARS, FROM MAY 1ST, 1965 TO APRIL 30, 1968, WITH THE FOLLOWING CHANGES IN RATES AND WORKING CONDITIONS.

THE REMAINDER OF EACH OF THE NEW AGREEMENTS SETS OUT THE RATES AND WORKING CONDITIONS APPLICABLE TO THE VARIOUS CLASSIFICATIONS OF EMPLOYEES REPRESENTED BY THE SEVERAL UNIONS SIGNATORY TO THOSE AGREEMENTS. IN NONE OF THEM IS THERE ANY SPECIFIC REFERENCE TO A BARGAINING UNIT.

IT IS OBVIOUS THAT NONE OF THE AGREEMENTS REFERRED TO ABOVE WAS EXECUTED AT A TIME WHEN IT WOULD OPERATE AS A BAR TO THE INSTANT APPLICATION. THE QUESTION BEFORE US, THEN, IS SOLELY AS TO WHETHER IN THE CIRCUMSTANCES OF THIS CASE THE APPROPRIATE UNIT OF EMPLOYEES IS AN "ALL-EMPLOYEE" UNIT, SUCH AS WAS DEFINED IN THE AGREEMENT OF MAY 1, 1963, OR WHETHER SOME SEGMENT OF THAT UNITY MAY BE APPROPRIATE IN THIS CASE.

The evidence before us leads us to the irresistible conclusion that the "Joint enterprise" came to an end on the date when the 1963 agreement ceased to operate and that each of the 8 unions that subsequently entered

INTO COLLECTIVE AGREEMENTS WITH THE COMPANY, i.e., ALL OF THE MEMBERS OF THE "JOINT ENTERPRISE" WITH THE EXCEPTION OF THE FIREMEN AND OILERS UNION, NEGOTIATED WITH THE COMPANY FOR AGREEMENTS TO COVER EMPLOYEES IN A SEGMENT OR SEGMENTS OF THE BARGAINING UNIT TO WHICH THE 1963 AGREEMENT HAD APPLIED, ALTHOUGH THESE SEGMENTS WERE NOT SPECIFICALLY IDENTIFIED IN THE NEGOTIATIONS NOR WERE THEY DEFINED IN THE AGREEMENTS THAT WERE ULTIMATELY EXECUTED. AS WE HAVE SEEN, FIVE OF THE UNIONS NEGOTIATED JOINTLY AND THREE EACH NEGOTIATED SEPARATELY. NO ARRANGEMENTS WERE MADE IN ANY OF THESE AGREEMENTS TO COVER THE CLASSIFICATIONS OF EMPLOYEES REPRESENTED BY THE FIREMEN AND OILERS UNION. THERE REMAIN, THEREFORE, EMPLOYEES IN A SEGMENT OF THE ORIGINAL UNIT WITH RESPECT TO WHOM NO AGREEMENT HAS BEEN MADE AND THE APPLICANT, IN OUR OPINION, IS CLEARLY ENTITLED TO SEEK CERTIFICATION FOR A BARGAINING UNIT CONSISTING OF SUCH EMPLOYEES.

COUNSEL FOR THE RESPONDENT COMPANY AND FOR THE FIREMEN AND OILERS UNION SOUGHT TO ELICIT FROM THE WITNESSES EVIDENCE DESIGNED TO SHOW THAT THE EMPLOYEES WHOM THE APPLICANT WAS SEEKING TO REPRESENT HAD BEEN ADEQUATELY REPRESENTED BY THE UNIONS WHICH FORMED THE "JOINT ENTERPRISE". THEY ALSO CONTENDED THAT THE EACTS OF THIS CASE WERE INDISTINGUISHABLE FROM THE FACTS IN THE LILY CUP LINE OF CASES. THE LILY CUP CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1961, P. 370, AND THE MANY OTHER DECISIONS OF THE BOARD IN THE SAME VEIN DEAL WITH A SITUATION WHERE AN APPLICANT SEEKS TO SEVER A CRAFT UNIT FROM A LARGER ESTABLISHED UNIT: THEY DO NOT HAVE ANY RELATION TO A SITUATION WHERE ONE TRADE UNION FOR THE WHOLE UNIT THAT THE INCUMBENT REPRESENTS. THE APPROACH TO THE PROBLEM SUGGESTED BY COUNSEL FOR THE COMPANY AND FOR THE FIREMEN AND OILERS UNION ASSUMES THAT THE "JOINT ENTERPRISE" STILL CONTINUES IN EFFECT AND THAT THE 9 UNIONS THAT WERE BOUND BY THE 1963 AGREEMENT REMAINED. THROUGHOUT THE ENTIRE PERIOD MATERIAL TO THIS APPLICATION. THE JOINT BARGAINING AGENTS FOR ALL THE EMPLOYEES IN THE WHOLE OF THE BARGAINING UNIT DEFINED IN THE 1963 AGREEMENT. AS WE HAVE ALREADY STATED, THE EVIDENCE DOES NOT SUPPORT SUCH A CONCLUSION.

WE ARE FACED WITH A PROBLEM IN SPELLING OUT THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT IN THIS CASE BECAUSE OF THE CIRCUMSTANCES SET OUT ABOVE AND THE WAY IN WHICH THE UNIT IN THE 1963 AGREEMENT WAS WORDED. IT IS CLEAR, HOWEVER, THAT THE APPROPRIATE UNIT IN THE INSTANT CASE COMPRISES THOSE EMPLOYEES OF THE RESPONDENT WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE FIREMEN AND OILERS UNION. COUNSEL FOR THE COMPANY INFORMED US AT THE FIRST HEARING HELD IN CONNECTION WITH THIS APPLICATION THAT THE LIST OF EMPLOYEES FILED BY THE COMPANY PURSUANT TO THE DIRECTIONS OF THE REGISTRAR INCLUDE ALL THE EMPLOYEES WHO WERE REPRESENTED BY THE FIREMEN AND OILERS UNION AND, IN ADDITION, ONE OTHER EMPLOYEE WHO HELD STATIONARY ENGINEER S PAPERS BUT WAS EMPLOYED AT THE MATERIAL TIME AS A GRINDERMAN. STATED THAT THE NAME OF THIS PERSON WAS INCLUDED ON THE LIST BECAUSE THE INCLUSION APPEARED TO BE CALLED FOR BY THE DESCRIPTION OF THE BARGAINING UNIT. PROPOSED BY THE APPLICANT IN ITS APPLICATION. THERE IS ALSO TO BE FOUND ON THIS LIST THE NAME OF ONE J. DE DIVITIS, CLASSIFIED AS A YARD LABOURER. THE LIST CONTAINS THE NOTATION "ON APRIL 1, 1965 THIS EMPLOYEE, A YARD LABOURER, REPRESENTED BY THE INTERNATIONAL LONGSHOREMEN S ASSOCIATION, WAS TEMPORARILY ASSIGNED AS A HELPER TO THE STATIONARY ENGINEERS". THE MEMBER-SHIP POSITION OF THE APPLICANT IS SUCH, HOWEVER, THAT IT IS NOT NECESSARY FOR US TO MAKE ANY RULING AT THIS STAGE AS TO WHETHER THESE PERSONS SHOULD OR SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT. THE BOARD IS SATISFIED, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE "APPROPRIATE BARGAINING UNIT" AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE APPLICANT IS THEREFORE ENTITLED TO TEST THE WISHES OF THE EMPLOYEES CONCERNED AS TO WHETHER THEY DESIRE THE APPLICANT OR THE FIREMEN AND OILERS UNION TO REPRESENT THEM IN COLLECTIVE BARGAINING.

A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTE CONSTITUENCY: ALL EMPLOYEES OF THE RESPONDENT AT THOROLD WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329. THE MATTER IS REFERRED TO THE REGISTRAR.

FOLLOWING THE TAKING OF THE VOTE, THE BOARD WILL ENTERTAIN REPRESENTATIONS FROM THE PARTIES, IF IT SHOULD BECOME NECESSARY TO DO SO, AS TO THE PROPER DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

10197-65-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 103 (APPLICANT) v. THE ONTARIO PAPER COMPANY LIMITED (RESPONDENT), INT'L BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329 (INTERVENER #1), INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232 (INTERVENER #2), AND LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS (INTERVENER #3).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: 1. SCOTT AND M. A. HEELEY FOR THE APPLICANT, S. K. LEARIE, Q.C., C. D. BANWELL, J. A. CARPENTER AND W. J. HAMMOND FOR THE RESPONDENT, A. THURSTON, L. INGLE AND W. R. TOWNSEND FOR THE INTERVENER, INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, R. HILL AND J. WEDGE FOR THE INTERVENER, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 232, AND H. R. BURKE FOR THE INTERVENER, LOCAL UNION 413 OF UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS.

DECISION OF THE BOARD: (JANUARY 17, 1966.)

Over a period of several months, three hearings were held in this case and a great deal of information was submitted by the respondent, at the request of the Board, concerning the composition of an appropriate bargaining unit and the staffing of the steam plant, which is that part of the respondent's operations concerned in these proceedings. We should add that the respondent company cooperated fully with the Board and with the other parties in supplying all necessary information. Following the hearings referred to above, the Board gave careful consideration to the evidence presented and to the representations of the parties and, for the reasons set

OUT AT LENGTH IN ITS DECISION OF NOVEMBER 9, 1965, THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN A VOTING CONSTITUENCY THAT IT DESCRIBED IN THE FOLLOWING TERMS: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329". IN DESCRIBING THE VOTING CONSTITUENCY IN THESE TERMS. THE BOARD HAD REGARD INTER ALIA FOR THE PAST BARGAINING PRACTICES AT THE THOROLD PLANT OF THE RESPONDENT AND THE PRINCIPLES LAID DOWN IN THE BARNETT-McQueen Case, (1954) C.C.H. CANADIAN LABOUR LAW REPORTER TRANSFER BINDER 155-159, 916.139, C.L.S. 76-646. IN ITS DECISION OF NOVEMBER 9. 1965 IN THIS MATTER, THE BOARD REFERRED TO A DECISION OF THIS BOARD IN AN EARLIER CASE INVOLVING SUBSTANTIALLY THE SAME PARTIES IN WHICH THE BOARD HAD DISMISSED AN APPLICATION FOR CERTIFICATION BROUGHT BY THE PARENT BODY OF THE PRESENT APPLICANT SEEKING A BARGAINING UNIT THAT WAS FOR ALL PRACTICAL PURPOSES THE SAME AS THAT SOUGHT BY THE APPLICANT IN THE INSTANT CASE. THE BOARD THEN WENT ON TO POINT OUT THAT THE RESPONDENT COMPANY AND THE TRADE UNIONS WITH WHOM IT HAD HAD ONE "JOINT" COLLECTIVE AGREEMENT AT AN EARLIER STAGE HAD NOT PRESERVED THE RELATIONSHIP THAT OBTAINED EARLIER BUT HAD IN FACT MATERIALLY ALTERED THEIR RELATIONSHIP. IT WAS BECAUSE OF THIS ALTERATION IN THE RELATIONSHIP BETWEEN THE PARTIES TO THE EARLIER AGREEMENT THAT THE BOARD HELD IN ITS DECISION OF NOVEMBER 9, 1965 THAT. UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT. A REPRESENTATION VOTE WAS IN ORDER. IF, AS COUNSEL FOR THE RESPONDENT SUGGESTS, HIS CLIENT WILL BE FACED WITH SERIOUS PROBLEMS IN LABOUR RELATIONS IN THE FUTURE, THESE PROBLE PROBLEMS HAVE BEEN CREATED BY THE COURSE OF CONDUCT PURSUED DURING THE LAST FEW MONTHS BY THE RESPONDENT AND THE UNIONS WHO HAD BEEN PARTIES TO THE "JOINT" COLLECTIVE AGREEMENT REFERRED TO ABOVE.

IT SHOULD BE NOTED THAT, FOLLOWING THE RELEASE OF THE BOARD'S DECISION OF NOVEMBER 9, 1965, NO REQUEST WAS MADE BY ANY OF THE PARTIES THAT THE BOARD RECONSIDER THAT DECISION. THE PARTIES MET AND UNANIMOUSLY SETTLED THE LIST OF ELIGIBLE VOTERS EXCEPT WITH RESPECT TO ONE PERSON WHOSE ELIGIBILITY TO VOTE WAS RULED ON BY THE REGISTRAR. AS WE SHALL SEE, NO EXCEPTION WAS TAKEN TO THIS RULING WHICH IS ENTIRELY IN ACCORD WITH THE BOARD'S POLICIES IN THAT BEHALF. THE LIST OF ELIGIBLE VOTERS THAT WAS USED BY THE RETURNING OFFICER IN CONNECTION WITH THIS VOTE BEARS THE HEADING: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD WHO ARE NOW REPRESENTED FOR COLLECTIVE BARGAINING BY THE INT. BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329, AS AT NOV. 9, 1965", AND IS SIGNED BY SHARMAN LEARIE FOR THE RESPONDENT, W.R. TOWNSEND FOR THE INTERNATIONAL BROTHER-HOOD OF FIREMEN AND OILERS, M.A. HEELEY FOR THE CANADIAN UNION OF OPERA-TING ENGINEERS, H.J. BURKE FOR THE UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS AND JOHN WEDGE FOR THE INTERNATIONAL UNION OF OPERATING ENGINEERS, BEING THE REPRESENTATIVES OF ALL THE PARTIES WHO APPEARED AT THE HEARINGS OF THIS APPLICATION AND WHO PARTICIPATED IN MAKING THE VOTE ARRANGEMENTS. THE VOTE WAS TAKEN ON DECEMBER 9, 1965. FORM 49, THE NOTICE OF REPORT OF RETURNING OFFICER, WAS SERVED ON ALL PARTIES AND WAS POSTED AS REQUIRED UNDER THE BOARD'S RULES OF PROCEDURE. AGAIN, IN ACCORDANCE WITH THE RULES, THE REGISTRAR SET DECEMBER 17 AS THE LAST DAY FOR THE FILING OF OBJECTIONS. NO NOTICE OF OBJECTIONS WAS RECEIVED FROM ANY OF THE PARTIES PURSUANT TO THIS NOTICE. ON DECEMBER 20, 1965, AFTER THE TIME FOR FILING OBJECTIONS HAD GONE BY, THE APPLICATION WAS

LISTED FOR CONTINUATION OF HEARING ON JANUARY 13, 1966, THE PURPOSE OF THE HEARING, AS STATED IN THE NOTICE OF HEARING, BEING TO ENABLE THE PARTIES TO MAKE REPRESENTATIONS TO THE BOARD WITH RESPECT TO THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT. THIS WAS IN ACCORDANCE WITH THE FOLLOWING STATEMENT IN THE BOARD DECISION OF NOVEMBER 9, 1965:

FOLLOWING THE TAKING OF THE VOTE, THE BOARD WILL ENTERTAIN REPRESENTATIONS FROM THE PARTIES, IF IT SHOULD BECOME NECESSARY TO DO SO, AS TO THE PROPER DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

AT THE HEARING ON JANUARY 13, 1966, THE REPRESENTATIVES OF THE APPLICANT MADE CERTAIN REPRESENTATIONS AS TO HOW THE BARGAINING UNIT SHOULD BE DESCRIBED, AS DID THE REPRESENTATIVE OF THE INTERVENER LOCAL UNION 413 OF THE UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS. HOWEVER, COUNSEL FOR THE RESPONDENT AGAIN POINTED OUT, AS HE HAD AT EARLIER HEARINGS, THE DIFFICULTIES THAT THE RESPONDENT WAS, IN HIS OPINION, LIKELY TO ENCOUNTER IN ITS DEALINGS WITH ITS EMPLOYEES AND THE UNIONS REPRESENTING THEM IN BARGAINING SHOULD THE APPLICANT BE CERTIFIED. HE DID NOT MAKE ANY REPRESENTATIONS AS TO HOW THE APPROPRIATE BARGAINING UNIT SHOULD BE DESCRIBED. HE SUBMITTED THAT, IN VIEW OF THE BACKGROUND OF THIS CASE AND THE FACT THAT THE APPLICANT HAD "WON" THE VOTE BY ONLY ONE BALLOT, THE BOARD OUGHT TO "LOOK AT A SLIGHTLY DIFFERENT FORM OF VOTING CONSTITU-ENCY THAN THAT REPRESENTED BY THE FIREMEN AND OILERS". IN EFFECT HE SEEMED TO BE ASKING THAT THE BOARD DISREGARD THE RESULT OF THE VOTE TAKEN ON DECEMBER 9 AND DIRECT A NEW VOTE IN SOME OTHER CONSTITUENCY THAN THAT SET OUT IN THE BOARD'S PREVIOUS DECISION. THE REPRESENTATIVE OF THE INTERVENER INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL 329. CONCURRED IN THE VIEW EXPRESSED BY COUNSEL FOR THE RESPONDENT.

WE ARE UNABLE TO FIND ANY JUSTIFICATION IN THE CIRCUMSTANCES OF THIS CASE FOR IGNORING THE RESULT OF THE VOTE TAKEN ON DECEMBER 9, AND, IN VIEW OF THE COURSE OF THE PROCEEDINGS AT THE LAST HEARING IN THIS MATTER, WE HAVE NO ALTERNATIVE BUT TO PROCEED TO DEFINE THE APPROPRIATE BARGAINING UNIT ON THE BASIS OF THE EVIDENCE PRESENTED TO US AND THE REPRESENTATIONS MADE ON BEHALF OF THE APPLICANT ALONE WITHOUT THE ASSISTANCE WE MIGHT HAVE DERIVED FROM ANY REPRESENTATIONS IN THAT REGARD THAT THE RESPONDENT MIGHT HAVE GIVEN US.

10381-65-R: SUDBURY MINE, MILL AND SMELTER WORKERS' UNION, LOCAL 598 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) (APPLICANT) V. THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED (RESPONDENT) AND UNITED STEELWORKERS OF AMERICA (INTERVENER).

APPEARANCES AT THE HEARING: John P. Nelligan, N. Thibault, W. Kennedy, R. McArthur, T. P. Taylor and C. Fournier for the applicant, T. D. Delamere, Q.C., B. M. Osler, Q.C. and N. H. Wadge for the respondent, and John H. Osler, Q.C., D. M. Storey, G. Gilchrist, D. McNabb and D. Brown for the intervener.

REASONS FOR DECISION OF THE BOARD: (OCTOBER 28, 1965.)

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

# INTRODUCTION AND BACKGROUND INFORMATION

On May 11th, 1965, the applicant, Sudbury Mine, Mill and Smelter Workers' Union, Local 598 of the International Union of Mine, Mill and Smelter Workers (Canada), hereinafter referred to as "Mine Mill", applied to the Board under the provisions of section 5(3) of The Labour Relations Act, to be certified for a unit of employees presently bound by a collective agreement, dated July 10th, 1963, between the respondent, The International Nickel Company of Canada, Limited, hereinafter referred to as "Inco" and the intervener, the United Steelworkers of America, hereinafter referred to as "Steel".

IN SUPPORT OF ITS APPLICATION, MINE MILL FILED 7,713 APPLICATIONS FOR MEMBERSHIP, CONFIRMED BY RECEIPTS, AND 137 CERTIFICATES OF MEMBERSHIP. MINE MILL DID NOT REQUEST A PRE-HEARING REPRESENTATION VOTE. THE LIST OF EMPLOYEES IN THE BARGAINING UNIT TOGETHER WITH SPECIMEN SIGNATURES WAS FILED WITH THE BOARD BY INCO ON JUNE 7TH, 1965. THAT LIST CONTAINED THE NAMES OF 15,007 EMPLOYEES, 12,281 OF WHOM WERE AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. THE REMAINING 2,726 PERSONS WERE SHOWN AS NOT HAVING WORKED ON MAY 11TH, 1965 FOR A VARIETY OF REASONS. NEITHER MINE MILL NOR STEEL HAS QUESTIONED IN ANY WAY THE NUMBER OF PERSONS ON THE LIST FILED BY INCO.

IN ITS INTERVENTION, WHICH WAS FILED A DAY LATER THAT THE LAST DAY FOR FILING PRESCRIBED BY THE BOARD'S RULES OF PROCEDURE, STEEL STATED IT DESIRED TO MAKE THE FOLLOWING SUBMISSIONS:

THE INTERVENER WILL SUBMIT AT ANY HEARING THAT MAY BE CALLED, NAMES OF (A) CERTAIN PERSONS CLAIMED AS MEMBERS BY THE APPLICANT WHO HAVE NEITHER SIGNED AN APPLICATION CARD NOR PAID ANY MONEY TO THE APPLICANT WITHIN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE APPLICATION; (B) CERTAIN PERSONS CLAIMED AS MEMBERS BY THE APPLICANT WHO HAVE PAID NO MONEY TO THE APPLICANT WITHIN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE APPLICATION; AND (C) CERTAIN PERSONS CLAIMED AS MEMBERS OF LONG STANDING WHO HAVE PAID NO MONEY TO THE APPLICANT ON ACCOUNT OF FEES OR DUES WITHIN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE APPLICATION.

THE FIRST HEARING IN THIS MATTER WAS HELD IN TORONTO ON JUNE 15TH, 1965. AT THIS HEARING THE PARTIES AGREED ON THE DESCRIPTION OF THE BARGAINING UNIT. BECAUSE THE LIST OF EMPLOYEES HAD NOT BEEN FILED UNTIL A WEEK BEFORE THE HEARING (AND IN POINTING THIS OUT WE INTEND NO CRITICISM OF THE RESPONDENT) THE BOARD WAS IN A POSITION TO GIVE ONLY A PRELIMINARY AND INCOMPLETE STATEMENT OF THE MEMBERSHIP POSITION OF THE APPLICANT, MINE MILL, IN RELATION TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. IN FACT, AT THIS STAGE THE SIGNATURE CHECK HAD NOT BEEN COMMENCED. IT WAS

STATED BY THE BOARD AT THIS TIME THAT TO REACH THE STAGE IT HAD BY JUNE 15TH, "ADDITIONAL STAFF HAD BEEN ASSIGNED TO WORK ON THE CASE AND THIS WAS IN KEEPING WITH THE BOARD'S INTENTION OF USING ALL AVAILABLE MEANS WITHIN ITS POWER TO EXPEDITE THE PROCESSING OF THE APPLICATION AND ITS FINAL DISPOSITION".

IT WAS ALSO POINTED OUT THAT WITH REFERENCE TO THE 2,726
PERSONS NOT AT WORK ON MAY 11th, THE BOARD WOULD HAVE TO RULE AS TO
THEIR INCLUSION OR EXCLUSION FOR PURPOSES OF THE COUNT, IN ACCORDANCE
WITH ITS REGULAR PRACTICE, NAMELY, IF AN EMPLOYEE WAS NOT AT WORK WITHIN
THE MONTH PRECEDING THE DATE OF THE MAKING OF THE APPLICATION, OR IF HE
HAS WORKED AT SOME TIME DURING THE PRECEDING MONTH, BUT THERE IS NO
DEFINITE DATE FOR HIS RETURN DURING THE MONTH FOLLOWING THE DATE OF THE
MAKING OF THE APPLICATION, SUCH EMPLOYEE IS NOT INCLUDED FOR PURPOSES
OF THE COUNT. AT NO TIME DURING ANY OF THE HEARINGS OF THIS CASE DID ANY
OF THE PARTIES TAKE ISSUE WITH OR MAKE REPRESENTATIONS TO THE BOARD ON THIS
ANNOUNCED PRACTICE. THE RESULT OF THE BOARD SRULINGS ON EACH OF THE
2,226 PERSONS WAS SUBSEQUENTLY ANNOUNCED TO THE PARTIES AND IS SET OUT
LATER IN THIS DECISION.

At the hearing the applicant was informed that it was entitled to see the cards filed by it for persons whose names were not on the list of employees filed by the respondent. In due course the applicant submitted a list of 70 names of persons it alleged were in fact at work on May 11th, 1965. The list contained further information with reference to changed clock numbers, different spellings and initials, as a result of which the Board was able to match a further 49 names with those on the respondent's list. Seventeen names were not on that list and the Board was unable to reach a conclusion at that stage with respect to the remaining 4 names. This information was released to the parties at a hearing in Sudbury and is reflected in the second count released by the Board on September 8th, 1965. No representations were made by any of the parties following the release of the Board's findings on the list of 70 names filed by Mine Mill.

At the hearing of June 15th, the intervener, Steel, filed with the Board, in accordance with its announced intention in its intervention, the names of 116 persons who, it believed, were claimed as members by Mine Mill and whose cards, it alleged, were deficient in one or more of the three heads set out in its intervention. The lists were accompanied by various documents in support of the claim and described in more detail in the Board's letter to the parties dated June 22nd, 1965. The applicant took the position that since the intervention was late, Steel should have applied to the Board to extend the time for filling and, further, that no further fillings should be permitted; in other words, the materials filed at the hearing on June 15th should constitute the "sum total of the intervention". The Board, after considering the representations of the parties, which included a request by Steel for leave to file, made the following ruling:

IT IS THE INVARIABLE PRACTICE OF THE BOARD IN DEALING WITH LATE INTERVENTIONS OR REPLIES TO ACCEPT THEM WITHOUT ANY FORMAL MOTION FOR LEAVE TO FILE. BY WAY OF ILLUSTRATION, IN A RECENT CASE WHERE AN INCUMBENT TRADE UNION DID NOT FILE ANY INTERVENTION, THE UNION WAS NEVERTHELESS PERMITTED TO PARTICIPATE IN THE HEARING AND ALL PROCEEDINGS. IN THE PRESENT CASE, AFTER CONSIDERING ALL THE CIRCUMSTANCES, THE INTERVENER'S REQUEST IS GRANTED. AS TO THE RESTRICTIONS SUGGESTED BY THE APPLICANT, MINE MILL, IF ANY PARTY SEEKS TO RAISE NEW ISSUES IN THE FUTURE, THIS WILL BE DEALT WITH IN ACCORDANCE WITH THE BOARD'S REGULAR POLICIES, INCLUDING THE QUESTION OF REASONABLE DILIGENCE, IF AND WHEN SUCH ATTEMPT IS MADE.

IN LETTERS DATED JUNE 21ST, 28TH, JULY 6TH AND 9TH, THE INTER-VENER, STEEL, SUBMITTED FURTHER NAMES (ACCOMPANIED BY SUPPORTING DOCUMENTS) TO BE ADDED TO THOSE SUBMITTED AT THE HEARING ON JUNE 15TH. NO ACTION WAS TAKEN BY THE BOARD WITH REFERENCE TO THESE LATER FILINGS IN VIEW OF THE REQUEST OF APPLICANT'S COUNSEL TO MAKE SUBMISSIONS AT THE NEXT HEARING RESPECTING THESE LATE FILINGS. AT THE BOARD'S FIRST HEARING IN SUBBURY, COMMENCING ON JULY 14TH, THE APPLICANT ARGUED THAT THE NAMES SUBMITTED AFTER THE FIRST HEARING BY STEEL SHOULD BE CONSIDERED ONLY IF THEY APPEARED TO RELATE TO A PATTERN OF MISCONDUCT ON THE PART OF MINE MILL. AFTER TAKING TIME TO CONSIDER THE REPRESENTATIONS OF THE PARTIES, THE BOARD ON JULY 20TH MADE THE FOLLOWING RULING:

WE HAVE NOW HAD AN OPPORTUNITY TO EXAMINE THE MATERIALS FILED BY THE INTERVENER FOLLOWING THE FIRST HEARING IN THIS MATTER. WHILE WE WOULD NOT PRESUME TO SUGGEST ON THE BASIS OF WHAT WE HAVE SEEN THAT THERE IS OR IS NOT ANY OVERALL PATTERN, IT IS CLEAR THAT THE ALLEGATIONS ARE, IN PART, OF A TYPE WHICH THE BOARD WOULD NORMALLY INVESTIGATE WHERE THE EMPLOYEES CONCERNED ARE CLAIMED AS MEMBERS BY THE APPLICANT. ACCORDINGLY, WE INTEND TO CONDUCT OUR USUAL INVESTIGATIONS.

FURTHER NAMES WERE SUBMITTED BY STEEL IN LETTERS DATED JULY 28TH, AND AUGUST 11TH. INDEED, THE BOARD, AFTER DUE DONSIDERATION, ACCEPTED THE FILING OF 2 FURTHER NAMES AT THE CONCLUSION OF WHAT PROVED TO BE ITS FINAL SITTINGS IN SUDBURY ON AUGUST 26TH. THE TOTAL NUMBER OF NAMES SUBMITTED WAS 169. A FEW OF THESE TURNED OUT TO BE DUPLICATES—THAT IS, THEY HAD BEEN SUBMITTED IN EARLIER FILINGS.

IT WILL BE RECALLED THAT THE ALLEGATIONS CONTAINED IN THE INTERVENTION REFERRED TO WHAT IN BOARD PARLANCE HAS BEEN KNOW FOR MANY YEARS AS "NON-SIGNS" AND "NON-PAYS". THESE PHRASES REFER TO CHARGES THAT AN EMPLOYEE HAS NOT SIGNED AN APPLICATION CARD FOR MEMBERSHIP IN A TRADE UNION OR, EVEN THOUGH HE MAY HAVE SIGNED, DID NOT PAY ANY MONEY ON HIS OWN ACCOUNT TOWARDS THE INITIATION FEE. THE BOARD, AFTER HAVING CARRIED OUT SOME OF ITS USUAL PRELIMINARY INVESTIGATIONS INTO THE ALLEGATIONS AND AFTER HAVING HAD AN OPPORTUNITY TO CONSIDER THE SUPPORTING DOCUMENTS ACCOMPANYING THE LISTS OF NAMES, MADE THE FOLLOWING RULING, AGAIN AT THE HEARING ON JULY 20TH:

THE MATERIAL FILED, IN A NUMBER OF INSTANCES, DOES NOT CONTAIN ALLEGATIONS OF NON-SIGN OR NON-PAY. RATHER THE CLAIM IS, "ALTHOUGH I SIGNED AND PAID, I DID SO TO GET BAR PRIVILEGES" OR "CAMP PRIVILEGES" OR FOR SOME OTHER SUCH REASON. IN SEVERAL CASES OF ALLEGED NON-PAY PREVIOUSLY FILED WITH THE BOARD AND INVESTIGATED BY IT, THE INVESTIGATION REVEALED THAT MONEY WAS PAID ALTHOUGH ONE REASON GIVEN WAS, FOR EXAMPLE, "TO GO SWIMMING AT A PARTICULAR CAMP".

THE BOARD DECIDED WITH RESPECT TO THESE MATTERS THAT IT WOULD NOT ITSELF TAKE ANY FURTHER ACTION. AND SO, TOO, THE BOARD DOES NOT INTEND ITSELF TO PURSUE THE MATTERS WHERE THERE IS NO CLAIM OF NON-SIGN OR NON-PAY. THE BOARD IS NOT NORMALLY CONCERNED WITH THE REASONS WHY AN EMPLOYEE JOINS OR DOES NOT JOIN A TRADE UNION. IF IT IS CONSIDERED THAT SOMETHING OCCURRED IN THE SIGNING UP WHICH WOULD AFFECT THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF MEMBERSHIP, THAT IS A MATTER FOR A PARTY TO ALLEGE AND PROVE IN THE ORDINARY WAY. SEE ALCAN-COLONY LIMITED, O.L.R.B. MONTHLY REPORT, JUNE, 1963, p. 159.

No representations were made to the Board following this ruling by any of the parties, no request was made to the Board for the names of the persons affected by it, and no evidence was called at any time by the intervener in support of these particular allegations.

WITH REFERENCE TO THE OTHER NAMES SUBMITTED, THE BOARD MADE ITS CUSTOMARY CROSS-CHECK OF CARDS TO ASCERTAIN WHICH OF THE PERSONS WHOSE NAMES HAD BEEN SUBMITTED WERE CLAIMED AS MEMBERS AND THEN, FOLLOWING ITS USUAL PROCEDURE, INSTRUCTED CERTAIN MEMBERS OF ITS STAFF TO CONDUCT THE USUAL INTERVIEW WITH THE EMPLOYEES CLAIMED AS MEMBERS BY MINE MILL. IN ALL, SOME 53 PERSONS WERE INTERVIEWED, SOME AS FAR AWAY FROM SUDBURY AS WINDSOR AND OSHAWA. THE BOARD'S OFFICERS WERE UNABLE TO LOCATE 7 PERSONS WHO HAD IN THE MEANTIME LEFT THE EMPLOY OF THE RESPONDENT. THE NAMES OF THESE 7 PERSONS WERE RELEASED TO THE INTERVENER, WHICH MADE NO FURTHER REPRESENTATIONS TO THE BOARD IN CONNECTION THEREWITH.

FOLLOWING CONSIDERATION OF THE REPORTS OF ITS EXAMINERS (AS MADE FROM TIME TO TIME) THE BOARD DETERMINED THAT HEARINGS SHOULD BE CONDUCTED WITH RESPECT TO CARDS SUBMITTED BY MINE MILL FOR 29 PERSONS AND, ACCORD—INGLY, IT CAUSED TO BE SOMMONED TO HEARINGS HELD IN SUDBURY THE EMPLOYEES, COLLECTORS AND SOME ADDITIONAL WITNESSES, ALL IN ACCORDANCE WITH ITS USUAL PRACTICE IN THIS REGARD. THE BOARD WAS UNABLE TO EFFECT SERVICE ON ONE OF THE 29 PERSONS AND ACCORDINGLY NO EVIDENCE WAS HEARD RESPECTING THAT PARTICULAR ALLEGATION, THE PARTIES AGREEING THAT IT WOULD SERVE NO USEFUL PURPOSE TO CALL THE COLLECTOR WHOM THE BOARD HAD MADE AVAILABLE AS A WITNESS. IN ADDITION, ON THE AGREEMENT OF THE PARTIES, THE BOARD HEARD EVIDENCE RESPECTING ONE OTHER CARD, ALTHOUGH IT HAD NOT MADE ITS USUAL PRELIMINARY INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING THE SIGNING

OF THE CARD IN QUESTION. (SEE P. 725) WE SHALL RETURN TO THESE MATTERS AFTER WE HAVE DETAILED CERTAIN ASPECTS OF THE BOARD'S EXAMINATION OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT.

IT WILL BE APPRECIATED THAT THE TASK OF SCRUTINIZING WITH CARE EACH OF THE 7,830 CARDS AND RECEIPTS AND CERTIFICATES OF MEMBERSHIP SUBMITTED BY MINE MILL, OF MATCHING THE NAMES ON THESE DOCUMENTS WITH THE 15,007 NAMES ON THE LIST SUBMITTED BY THE RESPONDENT AND OF COMPARING THE SIGNATURES ON THE MEMBERSHIP EVIDENCE WITH EMPLOYEE SIGNATURES FILED BY INCO, TOOK CONSIDERABLE TIME DESPITE THE ALLOCATION OF ALL AVAILABLE BOARD PERSONNEL TO THAT TASK. THE FIRST "COUNT" WAS RELEASED TO THE PARTIES IN LETTERS DATED JULY 9TH, 1965 AND IS AS FOLLOWS:

Number of Employees on Lists Submitted by Company Schedule "A" 12,281 "D" 2,726	15,007	
LESS Ruled out by Board on		
SCHEDULE "D"	399	
Total on Lists	14,608	
Number of Applications for Membership		
CONFIRMED BY RECEIPTS FILED:-		
By HAND May 12 COMBINATION APPLICATIONS	7.344	
CERTIFICATES OF MEMBERSHIP	1 / -	7,476
ORDINARY MAIL MAY 13		17.1-
COMBINATION APPLICATIONS	41	
CERTIFICATES OF MAMBERSHIE	2	43
REGISTERED MAIL MAY 25		
COMBINATION APPLICATIONS	9	
CERTIFICATES OF MAMBERSHIP		10
REGISTERED MAIL MAY 25		
COMBINATION APPLICATIONS	319	
CERTIFICATES OF MEMBERSHIP		321
OUNTIL TOWARD OF THE HOLINGTHEF		
LESS		7,850
REQUESTS FOR WITHDRAWALS		
BY APPLICANT UNION:-		
May 25 - 18 cards, LESS 1 NOT		
ON COMPANY LIST 17		
June 2		
June 10 2		20
TOTAL OF APPLICANT	S	
CARDS AND CERTIFICA		7,830
Names of Persons whose Names coincide		
WITH SCHEDULE "A"	6,088	
NAMES OF PERSONS WHOSE NAMES COINCIDE	0,000	
WITH SCHEDULE "D"	1,282	

LESS RULED OUT BY BOARD ON SCHEDULE "D" 1	89 7,181
*Duplicate Cards *Cards Ruled out by Board on	.28 32 .89 <u>649</u> 7,830
ADDITIONAL INFORMATION	
(1) Number of Receipts not Countersigned (Payer's name written or printed on receipt)	41
(2) Number of Receipts on which no amounts	11
(3) Number of Cards and Receipts on which no year shown	н 6
(4) Number of Cards not signed (printed)	1
(5) Number of Cards and Receipts not signed (printed)	1
(6) Number of Cards more than one year o	LD 2

# SIGNATURE CHECK

NOT VERIFIED

THE BOARD IS CONDUCTING A SIGNATURE CHECK WITH RESPECT TO SOME 35 CARDS AND RECEIPTS FILED BY THE APPLICANT.

NUMBER OF CERTIFICATES OF MEMBERSHIP

# ALLEGATIONS OF NON-PAY AND NON-SIGN

WITH RESPECT TO THE ALLEGATIONS AFFECTING 113 NAMES SUBMITTED BY THE INTERVENER AT THE HEARING HELD ON JUNE 15th, THE BOARD INTENDS TO INQUIRE INTO ALLEGATIONS RESPECTING 18 PERSONS AT THE HEARING IN SUBBURY COMMENCING ON JULY 14th. THE BOARD HAS BEEN UNABLE TO INVESTIGATE ALLEGATIONS RESPECTING TWO OF THE 113 PERSONS BECAUSE THESE PERSONS HAVE CEASED TO BE EMPLOYEES OF THE RESPONDENT AND THEIR ADDRESSES ARE UNKNOWN TO THE BOARD.

FURTHER INFORMATION RESPECTING THE COUNT WILL BE GIVEN TO THE PARTIES AT THE COMMENCEMENT OF THE HEARING IN SUDBURY ON JULY 14TH.

At the commencement of the first hearing in Sudbury on July 14Th, the July 14Th, the Board issued the following statement regarding the count:

At the Hearing in Toronto on June 15th, the Board Released some preliminary information concerning "defective" cards and certificates filed by the applicant. Some misunderstanding appears to exist about this matter and we think it desirable to clarify the situation.

AS WE ARE SURE THE PARTIES ALL REALIZE, WHEN MEMBERSHIP EVIDENCE IS FILED IN ANY CASE, THAT EVIDENCE IS CLOSELY SCRUTINIZED BY THE BOARD'S STAFF. THEY ARE UNDER INSTRUCTION TO DRAW TO THE ATTENTION OF THE BOARD ANYTHING ON A CARD OR RECEIPT, CERTIFICATE OF MEMBERSHIP OR DUES BOOK WHICH IN ANY WAY CONSTITUTES A DEPARTURE FROM A PROPERLY COMPLETED CARD, RECEIPT, CERTIFICATE OR DUES BOOK. IN THE PRESENT CASE THE SAME CARE WAS EXERCISED BY THE STAFF AS IN ALL OTHER CASES.

AT THE FIRST HEARING WHEN THE BOARD, FOR EXAMPLE, ANNOUNCED THAT THERE WERE 328 INSTANCES OF CARDS AND CERTIFICATES HAVING DATES CHANGED, IT SHOULD BE UNDERSTOOD THAT THE MEMBERSHIP EVIDENCE IN QUESTION HAD NOT AT THAT TIME BEEN EXAMINED BY THE BOARD ITSELF. THAT TASK HAS NOW BEEN COMPLETED AND WE PROPOSE TO GIVE YOU THE RESULTS OF OUR EXAMINATION OF THE EVIDENCE.

BEFORE DOING SO, HOWEVER, WE THINK IT ADVISABLE TO GIVE THE PARTIES SOME INDICATION OF THE TYPES OF IRREGULARITIES DRAWN TO THE BOARD SATTENTION BY ITS STAFF.

- (1) ALL THE MATTERS REFERRED TO UNDER THE HEADING "ADDITIONAL INFORMATION" ON THE COUNT SHEET MAILED TO THE PARTIES ON JULY 9, 1965.
- (2) ALL CARDS, RECEIPTS OR CERTIFICATES WHERE THE DATE WAS IN ANY WAY INCOMPLETE, AS FOR EXAMPLE WHERE THE DAY OR MONTH OR YEAR WAS LEFT OFF THE CARD AND/OR RECEIPT.
- (3) ALL INSTANCES WHERE THE DATES HAD BEEN CHANGED IN ANY WAY, AS FOR EXAMPLE WHERE THE DAY, MONTH OR YEAR WAS CHANGED ON THE CARD AND/OR RECEIPT.
- (4) ALL INSTANCES WHERE IT WAS POSSIBLE THAT DATES HAD BEEN ADDED TO CARDS OR RECEIPTS OR BOTH, EITHER COMPLETE DATES OR PERHAPS ONLY THE DAY OR MONTH OR YEAR, OR SOME COMBINATION THEREOF.
- (5) ALL INSTANCES WHERE IN THE PLACE ON THE CARD OR RECEIPT FOR THE EMPLOYEE'S OR COLLECTOR'S SIGNATURE, THERE APPEARED A PRINTED NAME INSTEAD OF A WRITTEN SIGNATURE. INCLUDED HERE WERE CARDS SIGNED WITH A MARK, THAT IS, AN "X".

AS WE SAID EARLIER, THE BOARD HAS NOW EXAMINED ALL THE MEMBERSHIP EVIDENCE IN QUESTION AND THE RESULT OF THAT EXAMINATION IS AS FOLLOWS:

1. THE INFORMATION CONTAINED UNDER THE HEADING "ADDITIONAL INFORMATION" ON THE COUNT RELEASED TO THE PARTIES ON JULY 9TH, 1965. PART OF THE IN-

FORMATION CONCERNING "RECEIPTS NOT COUNTERSIGNED" CAME AS A RESULT OF THE SIGNATURE CHECK. THE BOARD HAS MADE NO RULINGS ON THE MEMBERSHIP EVIDENCE REFERRED TO UNDER THIS HEADING.

2. SUBJECT TO ANY REPRESENTATIONS BY THE PARTIES, THE BOARD IS PRE-PARED AT THE PRESENT TIME TO ACCEPT AS SATISFACTORY MANY OF THE CARDS

Thus, for example, the fact that the day on which the card and/or receipt was signed was left off would appear to be of no significance if it is otherwise clear that the card was signed and money paid within the year. Again, the fact that the date on the card is incomplete would not appear to be significant if the receipt is properly dated.

Moreover, changes in dates appear to the Board to be inconsequential in many instances. Thus, a change in the day or the month, as for example, March to April for a 1965 card and receipt would not seem to have any possible bearing on the validity of the card. The same would appear to be true in cases where the year on the card only has been changed as a result of an obvious error, for example, 1964 changed to 1965 for a card dated early in January. However, where the year on both card and receipt was changed, the Board takes a different point of view.

In so far as addition of dates is concerned, the Board is prepared to accept many cards where this has occurred and where in the Board's opinion the addition has no bearing on the validity of the evidence. The addition of the day of the month, for example, in a case where the card and receipt were dated December, 1964, would seem to have no effect on the validity of the evidence. Again, additions on the card may not in a number of cases be significant as long as the receipt is properly dated.

IT SHOULD BE NOTED THAT IN ALL THE ABOVE CASES OF CHANGES OR ADDITIONS, THERE DOES NOT APPEAR TO HAVE BEEN AN ATTEMPT TO CONCEAL THE ALTERATIONS.

FINALLY, THE BOARD IS PREPARED TO ACCEPT CARDS AND RECEIPTS CONTAINING PRINTED NAMES RATHER THAN SIGNATURES WHERE IT IS SATISFIED THAT THE EMPLOYEE IN QUESTION PRINTED HIS NAME ON THE CARD OR THE RECEIPT. IN THIS CONNECTION, THE BOARD HAS FOUND THE DOCUMENTS FILED BY THE RESPONDENT MOST USEFUL BECAUSE THEY CONTAIN, IN MOST CASES NOT ONLY THE EMPLOYEE'S SIGNATURE BUT ALSO AN EXAMPLE OF HIS PRINTING.

THE BOARD IS NOT CONCERNED WITH THE FACT THAT THE COLLECTOR S

NAME MAY HAVE BEEN PRINTED ON THE RECEIPT. THE IDENTITY OF THE COLLECTOR IS THE IMPORTANT THING.

3. IN THE CASE OF APPROXIMATELY 70 COMBINATION CARDS AND RECEIPTS, THE BOARD HAS DECIDED THAT FURTHER INQUIRIES ARE NECESSARY. WE WISH TO MAKE IT CLEAR THAT THEMAIN OBJECT OF THE INQUIRY IS NOT TO REMEDY WHAT OTHERWISE MIGHT BE CONSIDERED IMPROPER EVIDENCE BUT, RATHER, TO ASSURE OURSELVES THAT THERE HAS BEEN NO ATTEMPT AT DECEPTION. IN THE CASE OF

THE EVIDENCE DESCRIBED UNDER THE HEADING "ADDITIONAL INFORMATION" ON THE COUNT SHEET RELEASED TO THE PARTIES, WE ARE SATISFIED THERE HAS BEEN NO ATTEMPT AT ANY DECEPTION AND CONSEQUENTLY BOARD OFFICERS HAVE NOT BEEN ASKED TO CONDUCT INVESTIGATIONS WITH RESPECT TO ANY OF THAT EVIDENCE. HOWEVER, WHERE THERE IS ANY POSSIBILITY THAT AN ATTEMPT HAS BEEN MADE TO DECEIVE THE BOARD, WE CONCEIVE IT OUR DUTY, HAVING REGARD TO THE PROVISIONS OF SECTION 83 OF THE LABOUR RELATIONS ACT, TO INVESTIGATE THE MATTER AND THAT IS THE REASON FOR THE FURTHER INQUIRIES RESPECTING THE 70 CARDS AND RECEIPTS. THIS, OF COURSE, IS ALSO THE REASON WHY THE BOARD CONDUCTS SIGNATURE CHECKS.

THE MATTERS BEING INVESTIGATED FALL UNDER THREE MAIN CATEGORIES:

- (A) ADDITIONS TO CARDS AND/OR RECEIPTS AS, FOR EXAMPLE, THE ADDITION OF THE YEAR TO BOTH CARD AND RECEIPT;
- (B) ALTERATIONS TO CARDS AND/OR RECEIPTS AS, FOR EXAMPLE, WHERE THE YEAR HAS BEEN CHANGED ON BOTH CARD AND RECEIPT;
- (c) cases where the dates on the cards and receipts give rise to some doubt, as for example a card dated in 1963 and the receipt in 1964.

IN CONCLUSION, WE WISH TO MAKE IT CLEAR THAT DEPENDING ON THE RESULTS OF THE BOARD'S INVESTIGATIONS, ANY MATTERS THAT REQUIRE FURTHER ACTION WILL BE DEALT WITH IN THE SAME WAY AS CASES OF "NON-PAY", THAT IS, THE PERSONS INVOLVED WILL BE SUMMONED TO APPEAR AT A HEARING OF THE BOARD.

IT WILL BE NOTED THAT THE WORDS "SUBJECT TO ANY REPRESENTATIONS BY THE PARTIES" PRECEDED THE BOARD STATEMENT THAT IT WAS PREPARED TO ACCEPT "AT THE PRESENT TIME" MANY CARDS AND RECEIPTS CONSIDERED BY IT. AT NO TIME FOLLOWING THE RELEASE OF THE ABOVE STATEMENT HAS ANY PARTY MADE ANY REPRESENTATIONS TO THE BOARD ON THE MATTERS DEALT WITH IN HEADING "2" IN THE STATEMENT.

IN ADDITION TO THE "DEFECTIVE" CARDS WHICH WERE REFERRED TO US BY THE BOARD STAFF FOR RULINGS, MANY OTHER CARDS WERE SIMILARLY REFERRED FOR DECISION ON THE QUESTION OF WHETHER SIGNATURES ON THE CARDS MATCHED THE SPECIMEN SIGNATURES FILED BY THE RESPONDENT. THE NUMBER OF CARDS IN BOTH CATEGORIES SO REFERRED TOTALLED OVER 730. AS A RESULT OF OUR EXAMINATION OF THESE CARDS, EXAMINERS WERE INSTRUCTED TO INTERVIEW 98 EMPLOYEES. SUCH INTERVIEWS WERE IN ADDITION TO THOSE CONDUCTED IN CONNECTION WITH THE ALLEGA-TIONS OF THE INTERVENER. TWO PERSONS WHO HAD LEFT THE EMPLOY OF THE RESPON-DENT COMPANY COULD NOT BE LOCATED. AFTER CONSIDERING THE REPORTS OF THE EXAMINERS, THE BOARD DETERMINED THAT IT WOULD BE NECESSARY TO HOLD HEARINGS WITH RESPECT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY MINE MILL FOR ONLY 6 OUT OF THE 96 PERSONS INTERVIEWED. THE BOARD WAS SATISFIED THAT THERE WERE NO IRREGULARITIES IN THE OTHER 90 CARDS. THE 6 EMPLOYEES IN QUESTION AND THE COLLECTORS CONCERNED WERE SUMMONED TO APPEAR AT HEARINGS HELD IN SUDBURY. REGRETABLY, ONE OF THE EMPLOYEES SO SUMMONED WAS KILLED LATER ON IN A TRAFFIC ACCIDENT. THE EVIDENCE HEARD WILL BE DEALT WITH ALONG WITH THE EVIDENCE HEARD IN CONNECTION WITH THE ALLEGATIONS OF THE INTERVENER.

FOLLOWING THE COMPLETION OF OUR EXAMINATION OF THE MEMBERSHIP EVIDENCE, INCLUDING THE EXAMINERS' REPORTS OF ALL PERSONS INTERVIEWED BY THEM, THE SECOND CHECK WAS UNDERTAKEN AND COMPLETED AND THE RESULTS HANDED TO THE PARTIES AT THE COMMENCEMENT OF THE FINAL HEARING IN TORONTO ON SEPTEMBER 8TH. THE SECOND "COUNT", WHICH INCORPORATES THE RESULTS OF ALL BOARD RULINGS WITH RESPECT TO ALL ASPECTS OF THE MEMBERSHIP EVIDENCE, EXCEPT AS NOTED HEREAFTER, IS AS FOLLOWS:

Number of Employees on Lis Submitted by Company Schedule	sts	81			
II III	"B" 2,7		15,007		
LESS RULED OUT BY BOARD ON SCHEDULE "D"			1,38		
Тот	AL ON LISTS		14,569		
NUMBER OF APPLICATIONS FO					
			7,344	7,476	
CERTIFI	TION APPLICATI		41	43	
CERTIFI	TION APPLICATI		9	10	
	TION APPLICATI		319 2	321	7,850
LESS REQUESTS FOR WITHDRAWAL BY APPLICANT UNION:- MAY 25 - 18 CARDS, LESS ON COMPANY LIS JUNE 2 - JUNE 10 -	1 NOT T 17 1 2 Tc	TAL OF A	Applicant Certific		20 7,830
Names of Persons whose with Schedule "A" Names of Persons whose with Schedule "D"		6,132			
LESS RULED OUT BY BOARD	ON SCHEDULE	214	7	,214	

# RECONCILIATION OF CARDS

CARDS FOR PERSONS AS TO WHOM BOARD IN DOUBT AS TO WHETHER ON COMPANY LISTS  UPPLICATE CARDS  CARDS RULED OUT BY BOARD ON SCHEDULE "D"  ADDITIONAL INFORMATION RE COUNT  (1) Number of Receipts NOT Countersigned  (PAYER'S NAME WRITTEN OR PRINTED ON RECEIPT)  4	
CARDS RULED OUT BY BOARD ON SCHEDULE "D"	
(1) Number of Receipts not Countersigned	0
( o while while on the cell )	·l
(2) Number of Receipts not Countersigned (Payer's name written or printed on receipt) Investigated by Board and Board satisfied	
MONEY PAID AND NO ATTEMPT TO SIMULATE PAYER S	8
(3) Number of Receipts on which no amount shown 10	0
(4) Number of Receipts on which no amount shown Investigated by Board in connection with another matter - Board now satisfied at	
LEAST \$1.00 PAID	1
(5) Number of Cards and Receipts on which no year shown	7
(6) Number of Cards not signed (printed)	1
(7) Number of Cards and Receipts not signed (PRINTED)	1
(8) Number of Cards more than one year old	2
(9) Number of Certificates of Membership not verified	3
(10) Miscellaneous	
RECEIPT BEARING COLLECTOR'S INITIALS ONLY	1.
Cards Board unable to investigate because employees out of Province, or Board unable to locate	
ALLEGED NON-PAYS	7
	1

NOTE: THE ABOVE FIGURES DO NOT REFLECT MATTERS STILL AWAITING DETERMINATION BY THE BOARD FOLLOWING THE HEARINGS SCHEDULED FOR SEPTEMBER 8TH AND 9TH. 1965.

Two points should be noted in connection with the above statement. At the time of its release the Board had made no rulings on any of the cards listed under the heading "Additional Information re Count". This matter will be adverted to later on in this decision. Further, as is set out in the statement, the figures did not reflect matters still awaiting determination by the Board as a result of the evidence it heard of alleged irregularities with respect to 34 cards filed by Mine Mill. In other words, the figures represented the most favourable position of that union.

# ANALYSIS OF EVIDENCE HEARD BY BOARD

THIS BRINGS US, THEN, TO A CONSIDERATION OF THE EVIDENCE CONCERNING THE 34 CARDS REFERRED TO ABOVE. THIS FIGURE, PLUS 2 CARDS AS TO WHICH NO EVIDENCE WAS HEARD, REPRESENTS THE TOTAL NUMBER OF CARDS, OUT OF THE 7,850 CARDS FILED BY MINE MILL, IN RESPECT TO WHICH THE BOARD FOUND IT NECESSARY TO CONDUCT HEARINGS. THIRTY OF THESE RESULTED FROM ALLEGATIONS OF "NON-SIGN" OR "NON-PAY" MADE BY STEEL, AND THE REMAINING 6 CASES AS A RESULT OF THE BOARD'S OWN INVESTIGATIONS. THE HEARINGS WERE HELD IN SUDBURY ON JULY 14TH, 15TH, 20TH, 21ST, AUGUST 4TH, 5TH, 25TH AND 26TH AND CONCLUDED WITH FURTHER EVIDENCE AND ARGUMENT IN TORONTO ON SEPTEMBER 8TH. DURING THE HEARINGS TESTIMONY WAS HEARD FROM SOME 77 WITNESSES, 7 OF WHOM TESTIFIED ON MORE THAN ONE OCCASION. DURING THE HEARINGS ALL PARTIES WERE AFFORDED A FULL OPPORTUNITY TO EXAMINE AND CROSS-EXAMINE THE WITNESSES, TO CALL SUCH FURTHER EVIDENCE AS THEY DEEMED ADVISABLE AND TO ARGUE ALL MATTERS IN ISSUE. IT IS NOT OUR IN-TENTION TO REVIEW ALL OF THE EVIDENCE IN DETAIL. WHILE IT IS APPRECIATED THAT FOR THOSE UNFAMILIAR WITH THE CASE, THE ANALYSIS WHICH FOLLOWS MAY AT TIMES APPEAR CONFUSING, IT WAS FELT THAT THIS DECISION COULD BE MORE SPEEDILY RELEASED IF WE CONFINED OURSELVES TO THE BARE ESSENTIALS. IN DEAL-ING WITH THE EVIDENCE THE BOARD HAS FOUND IT CONVENIENT TO FOLLOW THE CATEGORIES SELECTED BY COUNSEL FOR THE INTERVENER, EXCEPT IN THOSE CASES WHERE THE SAME COLLECTOR IS INVOLVED IN MORE THAN ONE CATEGORY. AT THIS STAGE, WE ARE CONCERNED PRIMARILY WITH FACT FINDING. OF COURSE, CARDS WHICH WE HAVE FOUND TO BE IN ORDER REQUIRE NO FURTHER CONSIDERATION. BUT, WHERE WE HAVE FOUND IRREGULARITIES, THEN, IN THE MAIN, WE HAVE LEFT THE CONSEQUENCES WHICH MAY FLOW THEREFROM TO BE DEALT WITH LATER IN THIS DECISION.

# CATEGORY 1

THE FIRST CATEGORY WE TURN TO IS THAT INVOLVING PACKER, PHILLIPS AND PAQUET, THREE INCIDENTS WHICH COUNSEL FOR THE INTERVENER STATED HE WAS NOT PRESSING. ON REVIEWING THE EVIDENCE, WE ARE SATISFIED THAT THE MEMBERSHIP CARDS SUBMITTED BY THE APPLICANT FOR THESE THREE EMPLOYEES ARE IN ORDER AND, ACCORDINGLY, THE CARDS ARE GOOD CARDS.

## CATEGORY 2

THE NEXT CATEGORY WITH WHICH WE INTEND TO DEAL IS DESCRIBED BY COUNSEL FOR THE INTERVENER AS "ACKNOWLEDGED CASES OF NON-PAY". COUNSEL

PLACES EIGHT INCIDENTS IN THIS CATEGORY. IN THE FIRST OF THESE GOUDREAU. THE EMPLOYEE. GAVE HIS EVIDENCE THROUGH AN INTERPRETER. WHILE GOUDREAU DOES NOT READ ENGLISH OR FRENCH, HE TESTIFIED HE COULD UNDERSTAND ENGLISH A LITTLE, AND THE CONVERSATION BETWEEN HIM AND THE COLLECTOR, CHELLEW, WAS IN ENGLISH. WE FIND HIS TESTIMONY BEFORE THE BOARD CONFUSING AT TIMES AND. IN ALL THE CIRCUMSTANCES, WE PREFER TO ACCEPT THE EVIDENCE OF CHELLEW WHERE IT DIFFERS FROM THAT OF GOUDREAU. EVEN SO, IT IS CLEAR THAT GOUDREAU DID NOT IN FACT PAY ANY MONEY ON HIS OWN BEHALF ON MAY 18th, 1965 WHEN HE SIGNED THE CARD. ACCORDING TO CHELLEW, GOUDREAU, WHOM HE HAD KNOWN FOR OVER A YEAR, APPROACHED CHELLEW AND ASKED HIM FOR A CARD AND THEN ASKED FOR A LOAN OF A DOLLAR, TELLING HIM HE WOULD REPAY IT LATER. NO OTHER ARRANGEMENTS FOR RE-PAYMENT WERE MADE. CHELLEW ASKED GOUDREAU IF HE COULD TURN THE CARD IN THAT NIGHT (NO DOUBT BECAUSE OF THE LATE DATE) AND GOUDREAU AGREED TO THIS. SUBSEQUENTLY, CHELLEW ASKED GOUDREAU A COUPLE OF TIMES FOR HIS DOLLAR BUT GOUDREAU KEPT STALLING AND FINALLY IGNORED HIM AND CHELLEW NEVER GOT HIS DOLLAR BACK. CHELLEW SAID THAT HE SIGNED UP 8 PERSONS OVER A PERIOD OF ABOUT A MONTH; OUR RECORDS SHOW THAT 7 CARDS WERE SUBMITTED IN WHICH HE WAS THE COLLECTOR. CHELLEW, AN EMPLOYEE OF INCO, WAS A VOLUNTARY ORGANIZER AND HAS NEVER HELD ANY OFFICE IN OR HAD ANY RESPONSIBLE POSITION WITH THE APPLI-CANT UNION .

IN THE NEXT INSTANCE IN THIS CATEGORY THE COLLECTOR, OSJANIKOW, AN EMPLOYEE OF INCO AND A VOLUNTARY ORGANIZER, WHO HAS NEVER HELD OFFICE IN MINE MILL AND WHO RECEIVED NO EXPENSE MONEY, SIGNED UP TWO PERSONS, D. LAVOIE AND R. LOTTE, ON MAY 6TH, 1965. BOTH LAVOIE AND LOTTE HAD JUST COMMENCED WORK AT INCO AND, ALTHOUGH STRANGERS TO OSJANIKOW, HE LOANED THEM EACH A DOLLAR ON THEIR PROMISE TO REPAY AND TURNED IN THEIR CARDS, AGAIN DOUBTLESS BECAUSE OF THE LATE DATE. THE INCIDENT ABOUT LOTTE WAS VOLUNTEERED BY OSJANIKOW WHEN GIVING EVIDENCE ABOUT THE LAVOIE CARD WHICH THE BOARD HAD PREVIOUSLY INVESTIGATED. THE PARTIES AGREED IT WOULD NOT BE NECESSARY TO CALL LOTTE. OSJANIKOW CLAIMED LOTTE REPAID THE DOLLAR BUT ADMITTED THAT LAVOIE DID NOT. IT DOES NOT APPEAR THAT ANY DEFINITE ARRANGEMENTS FOR REPAY-MENT WERE MADE OTHER THAN THAT LAVOIE WAS TO GIVE OSJANIKOW THE DOLLAR. LAVOIE SAW HIM A COUPLE OF TIMES AT WORK BUT OSJANIKOW MADE NO EFFORT TO COLLECT THE DOLLAR. OSJANIKOW TESTIFIED HE SIGNED UP ABOUT 30 PERSONS. OUR RECORDS SHOW THAT 24 CARDS WERE SUBMITTED WITH THE NAME OF OSJANIKOW AS THE COLLECTOR, 3 OF WHICH WERE "LOST" CARDS - THAT IS, FOR PERSONS NOT ON THE RESPONDENT'S LIST OF EMPLOYEES.

IN THE THIRD CASE IN THIS CATEGORY, MEALEY, A VOLUNTARY ORGANIZER WHO HAD NOT RECEIVED ANY EXPENSE MONEY AND WHO HAS NEVER BEEN AN OFFICER OF THE APPLICANT UNION, TURNED SEVERAL OF HIS CARDS OVER TO ONE, ST. CLAIR, WHO HAS NOW LEFT THE EMPLOY OF RESPONDENT AND COULD NOT BE LOCATED. ACCORDING TO Mealey, St. Clair returned two of the cards to him, each accompanied by a DOLLAR. ONE OF THE CARDS WAS FOR AN EMPLOYEE NAMED CROWDER WHO TESTIFIED THAT HE WAS SIGNED UP ON FEBRUARY 12TH, 1965, BY A PERSON HE HAD NEVER SEEN BEFORE, BUT IT WAS NOT MEALEY. CROWDER'S EVIDENCE, WHICH WE ACCEPT, WAS THAT HE DID NOT HAVE A DOLLAR WITH HIM AND HE PROMISED TO PAY THE DOLLAR LATER BUT THAT, ALTHOUGH HE STILL INTENDED TO PAY, HE NEVER SAW THE MAN AGAIN. CROWDER, WHO WAS IN A HURRY TO CATCH A RIDE, DID NOT COUNTERSIGN THE RECEIPT PORTION OF THE CARD. ON THE EVIDENCE BEFORE US WE FIND THAT MEALEY WROTE CROWDER S NAME ON THE RECEIPT ALTHOUGH WITHOUT ANY ATTEMPT TO SIMULATE CROWDER'S SIGNATURE. MEALEY ESTIMATED THAT HE SIGNED UP SOME 29 CARDS AND HE STATED FURTHER THAT, APART FROM THE TWO CASES REFERRED TO ABOVE, HE PERSONALLY COLLECTED THE MONEY IN THE 27 OTHER CASES. OUR RECORDS SHOW THAT

24 CARDS WERE SUBMITTED BY MINE MILL BEARING MEALEY'S SIGNATURE AS COLLECTOR. Two of these were "Lost" CARDS.

IN THE NEXT CASE IN THIS CATEGORY, THAT INVOLVING MCLEOD, THE COLLECTOR, ONE MCISAAC, UNFORTUNATELY COULD NOT BE LOCATED AND SO THE BOARD MUST DEAL WITH IT SOLELY ON THE BASES OF MCLEOD'S TESTIMONY THAT HE DID NOT PAY ANY MONEY TO MCISAAC. ACCORDING TO MCLEOD, THE SIGNING UP TOOK PLACE AT HIS RESIDENCE AFTER HE AND THE COLLECTOR HAD BEEN DRINKING FOR THREE HOURS IN A HOTEL. THEY WERE BOTH DUE TO GO ON SHIFT AT 4:00 O'CLOCK, BUT MCLEOD DID NOT GO TO WORK BECAUSE HE WAS TOO DRUNK. AFTER CAREFULLY CONSIDERING ALL OF HIS TESTIMONY, WE ARE NOT PREPARED TO FIND THAT ANY DOUBT HAS BEEN CAST ON THE CARDS SIGNED UP BY MCISAAC.

THE INCIDENT INVOLVING S.R.D. MUNROE APPEARS TO BE A CLEAR CASE OF THE COLLECTOR, BEATTIE, MAKING A LOAN TO MUNROE, A COMPLETE STRANGER. WHO SIGNED THE CARD AT THE END OF HIS FIRST DAY AT WORK FOR THE RESPONDENT. NAMELY, ON APRIL 30TH, 1965. WHEN MUNROE TOLD BEATTIE HE HAD NO MONEY, BEATTIE SAID HE WOULD LEND IT TO HIM AND MUNROE AGREED TO REPAY IT. HOWEVER. HE DID NOT DO SO, AND BEATTIE MADE NO EFFORT TO RECOVER HIS DOLLAR FROM MUNROE OR EVEN TO ASCERTAIN WHETHER MUNROE HAD PAID THE DOLLAR TO BEATTIE'S BROTHER. AS HAD BEEN SUGGESTED HE MIGHT DO WHEN THE SIGN-UP TOOK PLACE. IT IS CLEAR THEN THAT WE HAVE ANOTHER INSTANCE OF NO FINANCIAL SACRIFICE BY THE EMPLOYEE - A LOAN BY THE COLLECTOR AND NO EFFORT ON THE PART OF THE COLLECTOR TO RE-COVER HIS MONEY. FURTHERMORE, BEATTIE, IN ANSERING THE QUESTION AS TO WHETHER HE MADE OTHER LOANS, WOULD NOT MAKE AN OUTRIGHT DENIAL. HIS ANSWERS WERE, "NONE THAT I CAN RECALL" AND "NO, I DON'T THINK SO". BEATTIE ESTIMATED THAT HE SIGNED UP ABOUT 20 PERSONS. HOWEVER, ONLY 7 CARDS WERE SUBMITTED TO THE BOARD BEARING HIS NAME AS A COLLECTOR. HE WAS A VOLUNTARY ORGANIZER WHO HAD NEVER HELD OFFICE IN THE APPLICANT UNION.

THE INCIDENT INVOLVING R. H. HUBERT IS COMPLICATED BY THE FACT THAT THE PERSON WHOSE NAME APPEARS ON THE CARD AS A COLLECTOR, ART COTTON, COULD NOT BE FOUND. HUBERT TESTIFIED THAT HE WAS SIGNED UP BY ONE, CHAISSON, WHO IN TURN DENIED THIS. AFTER CONSIDERING THE EVIDENCE, INCLUDING THE VARIOUS HAND-WRITING SPECIMENS BEFORE THE BOARD, WE ARE SATISFIED THAT CHAISSON HAD NO PART IN SIGNING UP HUBERT. THAT BEING THE CASE, HUBERT'S MEMORY AND CREDIBILITY ARE SUSPECT AT THE VERY LEAST. FURTHERMORE, IT WOULD APPEAR THAT ON A LATER OCCASION HUBERT WAS INTERVIEWED BY AN ORGANIZER FOR THE APPLICANT, ONE SCOTT, WHO WAS ACCOMPANIED BY OTHER UNIDENTIFIED MINE MILL PEOPLE, AND AT THAT INTERVIEW HUBERT ASSURED SCOTT THAT THERE WAS NOTHING WRONG WITH HIS CARD. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT ANY DOUBT HAS BEEN CAST ON THE CARDS, INCLUDING HUBERT'S, ON WHICH COTTON'S NAME APPEARS AS THE COLLECTOR.

The seventh incident in this category concerns an employee named Smith. Having regard to the several different stories told by Smith and to his admitted lies, we are not prepared to accept his evidence where it differs from that of the collector, Wunsch. On this basis, we find that a third person, Sequin, brought Smith to Wunsch. Smith intended to join the applicant when he signed the card but he did not have a dollar. The transaction took place on May 22nd, 1965, and the last day for turning in cards to the applicant was May 25th. Wunsch explained this to Smith and, after pointing out that May 23rd and 24th were his regular days off, he offered to loan Smith a

DOLLAR, EVEN THOUGH SMITH WAS REALLY A STRANGER TO HIM. SMITH AGREED TO THIS. AT THE TIME, SMITH INTENDED TO PAY BACK THE DOLLAR BUT DID NOT IN FACT DO SO. WUNSCH, ALTHOUGH HE SAW SMITH ON A FEW OCCASIONS AFTER THAT, MADE NO EFFORT TO COLLECT THE DOLLAR OWING TO HIM. WUNSCH BELIEVES HE SIGNED UP SOME 18 OR 19 PERSONS. OUR RECORDS SHOW 20 CARDS BEARING HIS NAME AS COLLECTOR. HE WAS A VOLUNTARY ORGANIZER, RECEIVED NO COMPENSATION AND HAS NEVER BEEN AN OFFICER OF THE APPLICANT TRADE UNION.

THE LAST CARD INCLUDED IN THIS CATEGORY IS FOR BECHARD. THE COLLECTOR IN THIS CASE WAS WILLIAM SORENSON, WHO WAS ALSO THE COLLECTOR INVOLVED IN THE FLYNN INCIDENT, WHICH COUNSEL FOR THE INTERVENER HAS PLACED UNDER ANOTHER CATEGORY. WE INTEND TO DEAL NOW WITH BOTH CARDS.

FLYNN DENIED MAKING ANY PAYMENT TO SORENSON. WHILE THE LATTER CLAIMED FLYNN PAID. FLYNN UNDOUBTEDLY WAS ANXIOUS TO JOIN BECAUSE HE SOUGHT OUT A FELLOW EMPLOYEE, WRIGHT, AND ASKED HIM WHERE HE COULD SIGN UP. WRIGHT TOOK HIM TO SORENSON. IT SEEMS CLEAR THAT THE CARD AND RECEIPT WERE FILLED OUT AT THAT TIME. FLYNN, WHO WAS A STRANGER TO SORENSON, SAID HE HAD NO MONEY WITH HIM AND IT WAS AGREED THAT SORENSON WOULD COLLECT FROM HIM LATER ON. HOWEVER, HE NEVER DID IN FACT PAY THE MONEY. FLYNN ALSO SAID THAT TWO OR THREE WEEKS LATER HE TOLD SORENSON TO TEAR UP THE CARD. SORENSON AT FIRST TESTIFIED. THAT FLYNN DID NOT PAY AT THE TIME HE SIGNED THE CARD BUT PAID UP LATER ON. WHEN FACED WITH THE CARD IN QUESTION AND THE FACT THAT THE CARD AND RECEIPT PORTION ATTACHED THERETO BORE THE SAME DATE, HE CHANGED HIS STORY AND SAID FLYNN MUST HAVE PAID WHEN HE SIGNED BECAUSE HIS PRACTICE WAS NEVER TO DATE THE CARD AND RECEIPT UNTIL THE MONEY WAS PAID. SORENSON ALSO RELIED ON A NOTE BOOK IN WHICH HE KEPT THE NAMES OF ALL PERSONS HE SIGNED UP. THE BOOK CONTAINED FLYNN'S NAME AND. ACCORDING TO Sorenson, since there was no notation opposite the name of Flynn, this meant HE MUST HAVE PAID. SORENSON ADMITTED TO THE BOARD AT THIS POINT THAT THERE WAS ONE NAME IN THE BOOK - BECHARD'S - WHICH CONTAINED A NOTATION TO THE EFFECT THAT BECHARD'S HAD NOT PAID HIS DOLLAR. HE HAD RUN ACROSS THE NAME WHEN LOOKING THROUGH THE BOOK IN CONNECTION WITH FLYNN. SORENSON ADMITTED THAT HIS CHIEF PURPOSE IN KEEPING THE LIST WAS TO GUARD AGAINST FORGERIES. THE BOOK CONTAINED NO DATES AS TO WHEN PERSONS WERE SIGNED UP OR WHEN THEY PAID.

IT IS CLEAR THAT SORENSON HAD NO RECOLLECTION OF THE DETAILS OF THE FLYNN INCIDENT (WHICH OCCURRED IN JULY OF 1964) AND WAS RELYING ON HIS PRACTICE AND ON THE NOTE BOOK. BUT IT IS EQUALLY CLEAR THAT HIS CLAIMED PRACTICE OF NOT DATING CARD AND RECEIPT WAS DEPARTED FROM IN AT LEAST TWO CASES. THIS WAS ADMITTEDLY SO IN THE CASE OF BECHARD, AND WE MUST FIND IT TO BE THE CASE WITH RESPECT TO FLYNN. IN THIS CONNECTION THE TESTIMONY OF WRIGHT, WHO INTRODUCED FLYNN TO SORENSON, IS OF SOME SIGNIFICANCE. WRIGHT TESTIFIED THAT MONEY WAS NOT PAID AT THE TIME FLYNN SIGNED ALTHOUGH THE CARD WAS COMPLETED IN FULL ON THAT OCCASION. THEN, LATER, ACCORDING TO WRIGHT, SORENSON SPOKE TO HIM ABOUT THE FACT THAT FLYNN HAD NOT PAID AND WRIGHT IN TURN SPOKE TO FLYNN ABOUT IT. CLEARLY, THEN, SORENSON DEPARTED FROM HIS PRACTICE IN FLYNN'S CASE. WHILE IT MAY BE ARGUED THAT WE OUGHT TO BELIEVE SORENSON BECAUSE, AFTER ALL, HE DID VOLUNTEER THE INFORMATION ABOUT BECHARD, THIS INFERENCE IS OPEN TO SERIOUS DOUBT WHEN IT IS CONSIDERED ALONG WITH THE FACT THAT SORENSON WAS SUMMONED TO APPEAR BEFORE THE

BOARD, IN CONNECTION WITH THE BECHARD CASE, WHILE WAITING TO TESTIFY IN THE FLYNN INCIDENT. HE MAY WELL HAVE THOUGHT IT THE WISER COURSE TO DISCLOSE THE FACTS ABOUT THE BECHARD SIGN-UP. DESPITE THE FACT THAT FLYNN ON SEVERAL OCCASIONS PRODUCED THE DUES CARD WHICH HE HAD RECEIVED FROM THE APPLICANT AND DID SO WHEN WRIGHT SPOKE TO HIM, IN ALL THE CIRCUMSTANCES, WE ACCEPT FLYNN'S EVIDENCE IN PREFERENCE TO THAT OF SORENSON AND, ACCORDINGLY, FIND THAT FLYNN MADE NO FINANCIAL SACRIFICE.

THIS FACT IS ADMITTED BY SORENSON IN CASE OF BECHARD, WHO WAS A WORKING ACQUAINTANCE OF SORENSON'S. BECHARD WAS SUPPOSED TO PAY THE LOAN BACK AS SOON AS HE COULD BUT, APART FROM THIS, THERE WERE NO OTHER ARRANGEMENTS ABOUT REPAYMENT. SORENSON'S EXPLANATION IS THAT HE HAD FOR-GOTTEN ALL ABOUT IT UNTIL GOING THROUGH HIS NOTE BOOK IN CONNECTION WITH THE FLYNN INCIDENT. IT IS TRUE THAT THE CARD WAS SIGNED IN SEPTEMBER, 1964 BUT, ACCORDING TO BECHARD, WHOSE EVIDENCE WE HAVE NO REASON TO DOUBT, SORENSON SPOKE TO HIM ABOUT FIVE TIMES IN AN ATTEMPT TO COLLECT THE DOLLAR, TWO OF THE ATTEMPTS OCCURING AFTER CHRISTMAS, 1964. SORENSON COULD RECALL ONLY ONE OCCASION, AND THIS WAS BEFORE CHRISTMAS, 1964. THERE IS NO EX-PLANATION AS TO WHEN OR WHY THE CARD WAS TURNED IN TO MINE MILL. SORENSON WAS A VOLUNTARY COLLECTOR PARTICIPATING IN HIS FIRST CAMPAIGN. HE HAD NEVER BEEN AN OFFICER OF THE APPLICANT UNION AND RECEIVED NO EXPENSE MONEY. HE WAS OBVIOUSLY PROUD OF HIS RECORD OF SIGNING UP. ON HIS OWN ESTIMATE. O'VER A HUNDRED PERSONS. THE BOARD'S CHECK ON CARDS FILED SHOWED 103 CARDS (6 OF WHICH WERE "LOST" CARDS) SUBMITTED BEARING SORENSON'S NAME AS COLLEC-TOR. HIS ORGANIZING ACTIVITIES EXTENDED FROM JUNE OF 1964 TO MAY OF 1965.

BY WAY OF SUMMARY OF THE INCIDENTS EXAMINED IN THIS CATEGORY, THE BOARD FINDS THAT THERE ARE 8 CASES OF LOANS IN AT LEAST 7 OF WHICH THE MONEY WAS NOT REPAID. IN 7 OF THE CASES LOANS WERE MADE BY COLLECTORS AND IN ONE THE LOAN WAS MADE BY A PERSON WHO DID THE SIGNING UP BUT WHOSE NAME DOES NOT APPEAR AS THE COLLECTOR. FIVE OF THE CARDS WERE SIGNED UP IN THE LAST STAGES OF THE CAMPAIGN. NONE OF THE 6 COLLECTORS INVOLVED HAD EVER HELD OFFICE IN MINE MILL OR WAS A PROFESSIONAL ORGANIZER. FOUR DID NOT RECEIVE ANY EXPENSE MONEY, AND THERE IS NO EVIDENCE ON THIS POINT ABOUT THE OTHER 2. ALL WERE EMPLOYEES OF THE RESPONDENT AT THE TIME OF THEIR ORGANIZATIONAL ACTIVITIES.

### CATEGORY 3

COUNSEL FOR THE INTERVENER CALLED HIS NEXT CATEGORY "CASES OF UNUSUAL LOANS". IN THIS CATEGORY HE PLACED THREE CARDS, THOSE OF CHISHOLM, PERRAULT AND R. CARRIERE. THE DIFFICULTY WITH THE CHISHOLM CASE IS THAT HENDERSON, A KEY FIGURE IN THE TRANSACTION, COULD NOT BE LOCATED. WE ARE LEFT THEREFORE WITH THE CONFLICTING STORIES OF CHISHOLM AND THE COLLECTOR, VUSKANS. IN OUR VIEW, CHISHOLM'S TESTIMONY IS SUSPECT IN TWO RESPECTS. IN THE FIRST PLACE, HE IN EFFECT CHANGES HIS STORY AFTER BEING REMINDED OF HIS STATEMENTS TO THE BOARD'S INVESTIGATOR WHICH, INCIDENTALLY, DIFFERED AGAIN FROM HIS TESTIMONY BEFORE THE BOARD UNDER CROSS-EXAMINATION BY COUNSEL. IN THE SECOND PLACE, WE ARE OF THE OPINION THAT CHISHOLM WAS BEING LESS THAN FRANK WHEN QUESTIONED AS TO THE WHEREABOUTS OF HENDERSON, A WITHNESS TO AND KEY FIGURE IN THE TRANSACTION. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT DOUBT HAS BEEN CAST ON ANY OF THE CARDS SUBMITTED TO THE APPLICANT BY VUSKANS.

IN PERRAULT'S CASE WE HAVE NO HESITATION IN FINDING THAT ON THE NIGHT PERRAULT SIGNED HIS CARD MARSHALL, THE COLLECTOR, SAID TO HIM. "WHY PAY LATER? I OWE YOU \$5.00 AND I'LL TAKE IT OFF THE LOAN". PERRAULT AGREED TO THIS. THE ONLY QUESTION THAT ARISES IS DID MARCHALL OWE PERRAULT THE \$5.00? MARSHALL WAS UNSHAKEN IN HIS TESTIMONY ON THIS POINT. ON THE OTHER HAND, HE HAS MADE NO EFFORT TO REPAY THE REMAIN-ING \$4.00. PERRAULT'S POSITION UP TO THE TIME OF HIS RECALL TO THE WITNESS BOX WAS QUITE DIFFERENT. HE WOULD NOT DENY THAT MARSHALL OWED HIM THE \$5.00 BUT TOOK THE POSITION THAT HE DID NOT KNOW WHETHER HE WAS OR WAS NOT OWED THE MONEY. HE ADMITTED THAT AT THE TIME THE LOAN WAS SUPPOSED TO HAVE TAKEN PLACE THEY WERE DRINKING IN A BEVERAGE ROOM. WHEN HE WAS RECALLED TO GIVE EVIDENCE HIS ANSWERS WERE: " | CANTT REMEMBER" - "! DON'T THINK ! DID" - "! CAN REMEMBER NOW" - "! DIDN'T LEND HIM \$5.00". YET ON THE NIGHT HE SIGNED THE CARD HE COULD NOT REMEMBER AGREEING TO ALLOW MARSHALL TO DEDUCT THE DOLLAR FROM THE \$5.00 WHICH MARSHALL SAID HE OWED HIM. IT IS CLEAR, HOWEVER, FROM THE TESTI-MONY OF OTHERS THAT THIS CONVERSATION DID TAKE PLACE. PERRAULT HAD ALSO BEEN DRINKING THAT EVENING. TAKING INTO ACCOUNT ALL THESE MATTERS, WE FIND AS A FACT THAT MARCHALL DID OWE PERRAULT \$5.00 AT THE TIME PERRAULT SIGNED AND THAT PERRAULT'S CARD IS THEREFORE NOT IN DOUBT.

IN EXAMINING THE CARRIERE INCIDENT, WE MUST ALSO LOOK AT THE SPILCHEN CASE SINCE THE COLLECTOR IN EACH WAS THE SAME PERSONS, NAMELY, JOHN LEVESQUE. THERE IS A DIRECT CONFLICT BETWEEN SPILCHEN AND LEVESQUE, PARTICULARLY WITH RESPECT TO THE TIME WHEN AND THE CIRCUMSTANCES UNDER WHICH THE DOLLAR WAS PAID TO LEVESQUE. IN THE CARRIERE INCIDENT THERE IS RELATIVELY LITTLE CONFLICT BETWEEN LEVESQUE AND THE OTHER WITNESSES SAVE PERHAPS FOR A STATEMENT WHICH LEVESQUE IS ALLEGED TO HAVE MADE ON THE TELEPHONE TO CARRIERE A WEEK OR SO BEFORE THE HEARING TO WHICH THEY HAD BEEN SUMMONED. ON CONSIDERING THE EVIDENCE IN BOTH INCIDENTS, WE ACCEPT THE EVIDENCE OF LEVESQUE WHERE IT CONFLICTS WITH THAT OF THE OTHER WITNESSES. LEVESQUE, IN OUR JUDGMENT, WAS A RELIABLE WITNESS WHOSE TESTIMONY WAS CAREFULLY GIVEN AND WITH CONVICTION.

Spilchen's evidence, particularly with reference to the payment of the Dollar to Levesque, does not ring true. We find it difficult to believe that, unasked as he claims, he would hand over a dollar to Levesque without saying anything and simply because he was sorry for him and did not want him to be out a dollar. It is also curious that, if this took place, Spilchen would not have revealed this to the Board's investigator or even to the intervener when he signed its forms.

CARRIERE'S TESTIMONY WAS FAR FROM SATISFACTORY. HE WAS OBVIOUSLY RELUCTANT TO TESTIFY OR TO GIVE DETAILS. HE REFUSED TO SIGN THE BOARD'S INVESTIGATION FORM OR A FORM USED BY STEEL IN ITS INVESTIGATIONS. STATEMENTS MADE PRIOR TO THE HEARING CHANGED UNDER OATH; STATEMENTS MADE AT THE HEARING, UNDER FURTHER QUESTIONING, WERE SHOWN TO BE HALF-TRUTHS. FURTHERMORE, ALTHOUGH CARRIERE CLAIMS THAT ON THE DAY HE TESTIFIED HE REPAID A DOLLAR TO LACHAPPELLE, WHO HAD ORIGINALLY PUT UP THE MONEY WHEN CARRIERE SIGNED THE MEMBERSHIP CARD, HAVING REGARD TO THE DIFFERENT VERSIONS ABOUT THIS SUPPOSED REPAYMENT GIVEN BY CARRIERE AND LACHAPPELLE, WE ARE NOT PREPARED TO FIND THAT ANY SUCH REPAYMENT WAS IN FACT MADE. THERE IS THEREFORE NO REASON TO DOUBT LEVESQUE'S EVIDENCE THAT HE DID NOT SEE ANY PAYMENT MADE ON THAT DAY. AGAIN, CARRIERE'S CLAIM THAT LEVESQUE CALLED HIM ABOUT A WEEK BEFORE THE HEARING AND TOLD HIM TO SAY THAT LACHAPPELLE

HAD PUT UP THE MONEY, WHICH CLAIM IS DENIED BY LEVESQUE, DOES NOT CARRY CONVICTION BECAUSE CARRIERE HAD ADMITTEDLY BEEN SAYING THIS WAS SO, LONG BEFORE THE TELEPHONE CALL WAS MADE. FINALLY, THERE WAS NO ATTEMPT BY LEVESQUE TO CONCEAL THE FACT THAT LACHAPPELLE AND NOT CARRIERE HAD PAID THE MONEY TO HIM. THE HANDING OF THE RECEIPT BY LEVESQUE TO CARRIERE SOME DAYS AFTER CARRIERE SIGNED IS ENTIRELY CONSISTENT WITH THE UNDOUBTED FACT THAT LACHAPPELLE SAID HE WOULD PAY FOR CARRIERE BUT DID NOT HAVE ANY MONEY WITH HIM AND WITH THE CLAIM BY LEVESQUE THAT LACHAPPELLE DID IN FACT PAY IT TO HIM AT A LATER TIME.

IN CONCLUSION, THEN, WE FIND THAT SPILCHEN PAID LEVESQUE A DOLLAR IN SUPPORT OF HIS MINE MILL APPLICATION CARD AND THAT LEVESQUE RECEIVED A DOLLAR FROM LACHAPPELLE ON BEHALF OF CARRIERE'S APPLICATION CARD. HOWEVER, IN CARRIERE'S CASE, WE ALSO FIND THAT AT THE TIME CARRIERE SIGNED HIS CARD HE HAD NO INTENTION OF PAYING THE DOLLAR BACK TO LACHAPPELLE AND THAT THIS FACT WAS KNOWN TO LEVESQUE. WE FIND, FURTHER, THAT CARRIERE DID NOT PAY THE DOLLAR TO LACHAPPELLE. CARRIERE HAD KNOWN LACHAPPELLE FOR SOME SIX MONTHS BEFORE THE SIGN-UP WHICH WAS ON APRIL 29TH, 1965. LEVESQUE HAD KNOWN BOTH CARRIERE AND LACHAPPELLE PRIOR TO THIS DATE. IN FACT, HE WAS THEIR STOPE BOSS. LACHAPPELLE WAS NOT AN ORGANIZER AND DID NOT ASSIST LEVESQUE ON ANY OTHER OCCASION. LEVESQUE, AN EMPLOYEE OF INCO AND A COLUNTARY ORGANIZER, NEVER HELD ANY MINE MILL OFFICE. HE ESTIMATED HE SIGNED UP 15 PERSONS, BUT ONLY 13 CARDS WERE SUBMITTED BEARING HIS SIGNATURE AS COLLECTOR.

IN SUMMING UP OUR FINDINGS UNDER THE INTERVENER'S CATEGORY OF "UNUSUAL LOANS" TO WHICH WE HAVE ADDED ONE OTHER INCIDENT, NAMELY, THAT OF SPILCHEN, WE FIND THAT THERE IS NOTHING WRONG WITH THE SPILCHEN, PERRAULT OR FLYNN CARDS BUT THAT IN THE CASE OF CARRIERE, THERE WAS NO FINANCIAL SACRIFICE MADE OR INTENDED TO BE MADE BY CARRIERE AND THIS WAS KNOWN TO THE COLLECTOR, ALTHOUGH MONEY WAS PAID TO THE COLLECTOR BY A THIRD PARTY.

#### CATERGORY 4

WE TURN NOW TO THE INTERVENER'S CATEGORY TERMED "DOUBTFUL CARDS". THE FIRST OF THESE INVOLVES ATTILIO COUVRE. WE FIND IT VERY DIFFICULT TO PIECE TOGETHER ANY COHERENT STORY FROM COUVRE®S EVIDENCE OTHER THAN THAT HE INTENDED TO JOIN THE APPLICANT AND HE PAID THE COLLECTOR. DEVEAU. A DOLLAR. UNDOUBTEDLY COUVRE, WHO GAVE HIS EVIDENCE THROUGH AN INTERPRETER, AND DEVEAU HAD CONSIDERABLE DIFFICULTY IN COMMUNICATING WITH ONE ANOTHER. However, BOTH AGREE THAT ALTHOUGH DEVEAU WROTE COUVER'S NAME ON THE CARD. THIS WAS DONE WITH COUVRE®S CONSENT AND FURTHER THAT COUVRE®S HAND WAS ON THE INSTRUMENT USED BY DEVEAU. THE DIFFERENT REASONS GIVEN BY COUVRE AND DEVEAU AS TO WHY COUVRE S HAND WAS ON THAT INSTRUMENT MAY WELL BE ACCOUNTED FOR BY THE DIFFICULTIES OF COMMUNICATION. COUVRE TESTIFIED HE COULD WRITE A LITTLE IN ITALIAN BUT NOT AT ALL IN ENGLISH. HE COULD, HOWEVER, SIGN HIS NAME. COUNSEL FOR THE INTERVENER SEEKS TO ATTACH SIGNIFICANCE TO THE FACT THAT COUVRE STATED THAT WHEN HIS HAND WAS GUIDED IT WAS WITH A PEN AND DEVEAU, THE COLLECTOR, SAID HE USED A PENCIL. BUT EVEN HERE THERE IS CONFUSION BECAUSE UNDER CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT THE QUESTION WAS PUT AND THEN REPEATED, "WHEN COUVRE'S HAND WAS ON THE PENCIL WAS IT THERE TOGETHER WITH DEVEAU®S HAND?" AND THE WITNESS ANSWERED "YES".

WE DO NOT FOR A MOMENT SUGGEST THAT COUVRE WAS IN ANY WAY ATTEMPTING TO BE ANYTHING BUT AN HONEST WITNESS. HIS CONFUSION MAY HAVE COME ABOUT FROM LAPSE OF TIME OR HIS INABILITY TO UNDERSTAND THE INTERPRETER OR THE INTERPRETER'S INABILITY TO UNDERSTAND THE WITNESS OR FROM A COMBINATION OF ALL THREE. HOWEVER, HAVING REGARD TO THE STATE OF HIS EVIDENCE AS CONTRASTED WITH THE CLEAR EVIDENCE OF DEVEAU, UNSHAKEN AS IT WAS IN CROSS-EXAMINATION, WE ARE NOT PREPARED TO FIND ANYTHING WRONG WITH THIS CARD OR TO FIND, AS SUGGESTED BY THE INTERVENER, THAT THERE WAS ANYTHING THAT REQUIRED EXPLANATION OR SHOULD HAVE BEEN DIVULGED TO THE BOARD.

The only question in the Next case in this category, that involving Cameron, is "When was the card signed?" Having regard to all the evidence, including that of the witness Duggan, we are satisfied the card was signed on the date it bears, namely, May 23rd, 1964. Furthermore, when comparing the hand-writing on the card with the specimens taken at the hearing, we are satisfied that Danis, the collector, wrote in the figures "64" and "1964" on the card. We find that this is a good card and that there is nothing in this transaction which requires any explanation or suggests any lack of frankness to the Board.

The Last case in this category concerns the card of H. Lalonde. It is clear from the evidence that the card was signed in June 1964, and further, that at the time the card was handed in to the applicant by the collector, O'Brien, there was nothing wrong with the card other than, perhaps, the fact that the card portion contained no date. It is also clear, however, that some time after April, 1965 when the applicant commenced photostating its cards, some unknown person added the date "June 3rd, 1965" to the card and wrote a "5" over the figure "4" on the receipt portion of the card so as to make the dates on the card and receipt coincide. No explanation of this was advanced by the applicant. On the other hand, it seems unlikely that whoever made the changes was motivated by an attempt to mislead the Board because the date inserted was a most unlikely one, that is, a date in the future, and, further, there was no attempt to conceal the changes.

### CATEGORY 5

THE NEXT CATEGORY SUGGESTED BY COUNSEL FOR THE INTERVENER IS THAT OF "DISPUTED NON-PAYS". INTO THIS CATEGORY HE PLACED 10 CARDS, INCLUDING THOSE FOR FLYNN AND SPILCHEN WHICH WE HAVE ALREADY CONSIDERED. THE FIRST CARD IN THIS CATEGORY CONCERNED ONE, FLETCHER. THE COLLECTOR, BOYD, WAS ALSO THE COLLECTOR IN THE KILLIN INCIDENT AND WE PROPOSE TO DEAL WITH THE TWO CARDS TOGETHER. IN THE CASE OF FLETCHER, THERE IS A DIRECT CON-FLICT OF TESTIMONY. FLETCHER SAID HE NEVER PAID BOYD ANY MONEY. BOYD DENIED THIS AND HIS TESTIMONY WAS SUPPORTED BY FOX. IN THE CASE OF KILLIN, THE CONFLICT IS NOT QUITE SO APPARENT. KILLIN MAINTAINED HE NEVER PAID BOYD ANY MONEY BUT SIGNED WHEN A THIRD PERSON BRENNAN, HANDED BOYD THE DOLLAR. BOYD HAD NO RECOLLECTION OF THE SPECIFIC DETAILS AND THIS IS QUITE UNDERSTANDABLE, HAVING REGARD TO THE FACT THAT HE SIGNED UP 50 OR 60 PERSONS AND THAT ON THIS PARTICULAR OCCASION HE WAS ATTEMPTING TO SIGN UP A NUMBER OF STRANGERS IN DIFFERENT ROOMS IN A BUNKHOUSE. BOYD, HAVING NO SPECIFIC RECOLLECTION OF THE EVENT, RELIED ON HIS PRACTICE OF NOT ISSUING A RECEIPT UNTIL THE DOLLAR WAS PAID.

WE WERE NOT IMPRESSED WITH FLETCHER AS A WITNESS.

HIS DEMEANOUR IN THE WITNESS BOX LEFT MUCH TO BE DESIRED. HIS TESTIMONY, APART FROM THE KEY QUESTION AS TO WHETHER HE PAID THE DOLLAR, CONTAINS DISCREPANCIES AND SOME RATHER UNBELIEVABLE ASSERTIONS. THUS, FOR EXAMPLE, HIS STATEMENT THAT HE SIGNED FOR BAR PRIVILEGES WE CANNOT ACCEPT IN THE LIGHT OF THE LENGTHY DISCUSSIONS OVER WELFAR PLANS WHICH HE FREELY ADMITTED TOOK PLACE. AGAIN, HIS STATEMENTS ABOUT THE DRINKING THAT TOOK PLACE ARE DIFFICULT TO ACCEPT, HAVING REGARD TO THE FACT THAT THE BAR WAS CLOSED - A FACT WHICH, INCIDENTALLY, HE DID NOT REMEMBER UNTIL HE WAS RECALLED TO GIVE FURTHER EVIDENCE. AGAIN, HE CONTRADICTED HIMSELF BY SAYING IN ONE PLACE THAT AFTER HE SIGNED HE STAYED FOR THE DANCE AND IN ANOTHER THAT AFTER HE SIGNED HE "TOOK OFF". IN CONTRAST, THE EVIDENCE OF BOYD AND FOX WAS CONSISTENT AND CLEAR-CUT, AND THEIR ACCOUNT OF WHAT OCCURRED IS MORE CREDIBLE THAN THAT GIVEN BY FLETCHER.

IN THE KILLIN INCIDENT THE ONLY QUESTION REALLY IS, "DID BRENNAN HAND THE DOLLAR TO BOYD?" THERE SEEMS NO REASON TO DOUBT THAT BOYD RE-CEIVED A DOLLAR. AT THE TIME OF THE SIGN-UP KILLIN AND BRENNAN WERE CELEBRATING THE LATTER S BIRTHDAY AND DURING THE COURSE OF THE EVENING A CONSIDERABLE QUANTITY OF LIQUOR WAS CONSUMED. IN FACT. BRENNAN HAD NO RECOLLECTION OF THE SIGN-UP AND SO COULD NEITHER CONFIRM OR DENY KILLIN'S STORY. BOYD REMEMBERED SEEING BRENNAN IN THE BUNKHOUSE BUT DENIED THAT BRENNAN GAVE HIM A DOLLAR. BOYD PUT IT THIS WAY: "! WOULD REMEMBER IF HE GAVE ME A DOLLAR. HAVING SEEN AND HEARD MR. BRENNAN. WE WOULD BE INCLINED TO AGREE AND ESPECIALLY IF BRENNAN WAS IN A JOVIAL MOOD AT THE TIME. KILLIN WAS SOMEWHAT LESS THAN FRANK DURING THE EARLIER PART OF HIS TESTIMONY. IT WAS NOT UNTIL BRENNAN GAVE EVIDENCE THAT WE LEARNED THAT KILLIN HAD BEEN HELPING BRENNAN TO CELEBRATE HIS BIRTHDAY. WHILE HE MAINTAINED THAT HE REMEMBERED CLEARLY THE EARLY PART OF THE EVENING WHEN THE SIGN-UP TOOK PLACE, HE ADMITTED THAT HE RECALLED NOTHING AFTER 11:00 O'CLOCK AND THAT HE DID NOT GO TO WORK THE NEXT MORNING BECAUSE OF A HANGOVER. UNQUESTIONABLY A PARTY WAS GOING ON WHEN BOYD CAME INTO THE ROOM IN THE BUNKHOUSE WHERE THE SIGN-UP TOOK PLACE. THERE WERE PERSONS OTHER THAN KLLIN. BRENNAN AND BOYD IN THE ROOM AND. AS THE EVIDENCE INDICATES, OTHERS WERE GOING AND COMING. BOYD DID NOT PARTICIPATE IN THE PARTY, HAVING ONE DRINK ONLY AND REFUSING THE OFFER OF OTHERS. HAVING REGARD TO ALL OF THE CIRCUMSTANCES SET OUT ABOVE, WE ACCEPT THE EVIDENCE OF BOYD IN PREFERENCE TO THAT OF FLETCHER OR KILLIN. WE THERE-FORE FIND THE FLETCHER CARD TO BE A GOOD CARD. WHILE IT MAY BE THAT KILLIN GOT A DOLLAR FROM BRENNAN TO PAY BOYD, WE ARE NOT PREPARED TO FIND THAT BOYD HAD KNOWLEDGE OF ANY SUCH TRANSACTION.

THE NEXT CARD TO BE CONSIDERED IS THAT OF JEANVEAU. ONCE
AGAIN THERE IS A CONFLICT OF EVIDENCE, JEANVEAU DENYING THAT HE PAID AND
THE COLLECTOR, GAVAN, ASSERTING THAT HE WAS PAID BY JEANVEAU. JEANVEAU,
AN EMPLOYEE OF TWO WEEKS ONLY BUT A PREVIOUS ACQUAINTANCE OF GAVAN'S,
TESTIFIED THAT HE SIGNED UP AROUND THE END OF JANUARY. HE TOLD GAVAN HE
DID NOT HAVE THE MONEY BUT WOULD PAY HIM THE FOLLOWING WEEK. ACCORDING
TO JEANVEAU, GAVAN MADE SEVERAL EFFORTS TO COLLECT THE DOLLAR BUT
STOPPED ASKING FOR IT IN FEBRUARY. THERE WAS NOTHING IN THE EVIDENCE OF
JEANVEAU OR IN HIS DEMEANOUR IN THE WITNESS BOX WHICH WOULD LEAD US TO
INFER THAT HE WAS NOT TELLING THE TRUTH. GAVAN GAVE WHAT, ON THE SURFACE,
WAS A PRETTY DETAILED ACCOUNT OF WHAT HAPPENED AND WHY HE REMEMBERED, BUT
HIS STORY FELL APART IN SOME PLACES. HE REFUSED TO BUDGE FROM HIS STATE-

MENT THAT JEANVEAU WAS SIGNED UP ON JANUARY 27TH, 1965, THE DATE ON THE CARD. BOTH AGREED THE SIGNING UP TOOK PLACE AT WORK, YET NEITHER WORKED ON JANUARY 27th. AGAIN. GAVAN STATED HE FILLED IN THE DATE ON THE RECEIPT (FEBRUARY 2ND, 1965) WHEN HE TURNED THE CARD IN. HE REMEMBERED THAT DAY BECAUSE HE HAD TO WALK HOME FROM THE MINE MILL OFFICE IN A SNOW STORM. HOWEVER, IT WAS AGREED BY THE APPLICANT AND INTERVENER THAT THERE WAS NO PRECIPITATION THAT DAY. WE HAVE CAREFULLY EXAMINED EXHIBIT 12 (THE NOTEBOOK IN WHICH GAVAN KEPT NOTES ON THE PERSONS HE SIGNED UP) AND WHILE IT IS POSSIBLE HE MAY HAVE MISREAD HIS OWN NOTES, IN THE FACE OF HIS OWN POSITIVE STATEMENTS, WE ARE UNABLE TO GIVE HIM THE BENEFIT OF THAT DOUBT. IN THE CIRCUMSTANCES WE MUST FIND THAT JEANVEAU DID NOT PAY ANY MONEY TO GAVAN. AND FURTHER. THAT GAVAN. FOLLOWING THE SIGN-UP. MADE SEVERAL UNSUCCESSFUL ATTEMPTS TO COLLECT THE DOLLAR. GAVAN WAS A VOLUNTARY ORGANIZER WHO ESTIMATED THAT HE SIGNED UP SEVEN PERSONS. FIVE CARDS (2 OF WHICH WERE "LOST" CARDS) WERE SUBMITTED BEARING HIS SIGNATURE AS COLLECTOR. HE HAS NOT HELD ANY OFFICE IN THE UNION AND RECEIVED NO EXPENSE MONEY. HE IS AN EMPLOYEE OF INCO.

WE NOW TURN OUR ATTENTION TO TWO CARDS INVOLVING MCNAMARA AS THE COLLECTOR. IN THE FIRST OF THESE TURNER, THE EMPLOYEE, CLAIMED THAT HE WAS SIGNED UP UNDERGROUND AND DID NOT PAY BECAUSE HIS MONEY WAS IN HIS LOCKER. MCNAMARA APPROACHED HIM FOR THE MONEY SEVERAL TIMES, BUT ALWAYS UNDERGROUND, NEVER WHEN HE WAS ON THE SURFACE. MCNAMARA, A VOLUNTARY ORGANIZER WHO SIGNED UP SOME 70 OR 80 PERSONS, HAD NO SPECIFIC RECALL OF THIS PARTICULAR INCIDENT, WHICH TOOK PLACE IN JUNE, 1964. HE RELIED ON HIS PRACTICE OF NOT GIVING A RECEIPT UNTIL HE HAD RECEIVED THE MONEY IN ORDER TO REFUTE TURNER!S CLAIM.

IN THE CASE OF G. A. MUNRO WE HAVE A SOMEWHAT DIFFERENT SITUA-MUNRO CLAIMED HE SIGNED THE CARD BUT DID NOT PAY THE DOLLAR. McNamara was equally insistent that the dollar was paid and on this OCCASION HE MAINTAINED THAT HE REMEMBERED THE INCIDENT CLEARLY AND WAS NOT RELYING SOLELY ON HIS PRACTICE. MUNRO DID NOT IMPRESS US AS A WITNESS AND HIS EVIDENCE WAS FAR FROM SATISFACTORY. HE FIRST TOLD THE BOARD THAT HE WAS SIGNED UP SHORTLY AFTER HE STARTED TO WORK ON FEBRUARY 28TH. 1965 AND THAT HE GOT HIS RECEIPT THAT DAY. THE QUESTION OF MONEY WAS NOT DISCUSSED WHEN HE SIGNED THE CARD AND GOT HIS RECEIPT, BUT WAS BROUGHT UP SOME THREE DAYS LATER, A STATEMENT WE FIND DIFFICULT TO ACCEPT. However, according to Munro, HE TOLD McNamara HE COULD NOT PAY UNTIL AFTER HIS FIRST FULL PAY WHICH WOULD BE ON MARCH 15TH. THIS COULD NOT POSSIBLY BE TRUE BECAUSE THE CARD AND RECEIPT ARE DATED MARCH 16TH. FACED WITH THIS, MUNRO THEN CHANGED HIS STORY TO SAY HE DID NOT SIGN BEFORE MARCH 16TH WHICH, IF TRUE, DESTROYS THE REASON HE GAVE McNamara for not paying. He thentried to explain this away by saying -HE MEANT HIS NEXT PAY. IN ADDITION, THERE WERE OBVIOUS DISCREPANCIES BETWEEN HIS TESTIMONY AND EARLIER STATEMENTS MADE TO THE INTERVENER. IN CONTRAST TO THIS, MCNAMARA'S ACCOUNT WAS ENTIRELY CONSISTENT WITH THE DATE ON THE CARD AND RECEIPT AND WITH THE DATE WHEN MUNRO RECEIVED HIS FIRST FULL PAY, THAT IS, MARCH 15TH. MOREOVER, HIS ANSWERS UNDER CROSS-EXAMINATION BY COUNSEL FOR THE INTERVENER WERE CONVINCING. THUS. FOR EXAMPLE, HE REMEMBERED THIS INCIDENT BECAUSE MUNRO WAS SIGNED UP IN MCNAMARA S HOME. MOREOVER, HE HAD PREVIOUSLY LOANED MUNRO MONEY WHILE

THE LATTER WAS WAITING TO SEE IF THE RESPONDENT WAS GOING TO HIRE HIM AND, BECAUSE OF THIS, MCNAMARA FOUND IT NECESSARY TO EXPLAIN TO MUNRO THAT HE COULD NOT LEND HIM MONEY.

IN CONSIDERING TURNER'S CREDIBILITY WE HAVE NOTED TWO MATTERS IN PARTICULAR. WE FIND IT DIFFICULT TO BELIEVE THAT IF, AS CLAIMED BY TURNER, HE HAD PROMISED TO PAY LATER, MCNAMARA WOULD ONLY HAVE SOUGHT TURNER OUT UNDERGROUND. A NUMBER OF WITNESSES HAVE TESTIFIED IT WAS NOT THEIR PRACTICE TO CARRY MONEY WHEN UNDERGROUND. MCNAMARA'S TESTIMONY, WHICH WE ACCEPT, IS THAT WHERE MEN DID NOT PAY HE MADE IT HIS PRACTICE TO ASCERTAIN THEIR CLOCK NUMBERS AND THEN CHECK WITH THEM AS THEY PUNCHED OUT. IN THE SECOND PLACE, WE REJECT OUTRIGHT TURNER'S EXCUSE (THAT HE DID NOT KNOW THE DAY) FOR FAILING TO APPEAR BEFORE THE BOARD ALTHOUGH PROPERLY SERVED WITH A SUMMONS. ON THE OTHER HAND, OUR IMPRESSION OF MCNAMARA THROUGHOUT ALL OF HIS TESTIMONY IS THAT HE WAS A TRUTHFUL WITNESS. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT BOTH MUNRO AND TURNER PAID THEIR DOLLARS TO MCNAMARA.

IN THE NEXT CASE, THE EMPLOYEE, VAILLANCOURT, TESTIFIED THAT WHILE HE SIGNED THE CARD AND RECEIPT ON APRIL 16, 1965, HE COULD NOT PAY THE DOLLAR AT THAT TIME BECAUSE HE HAD JUST STARTED WORK. L. LALONDE, THE COLLECTOR, TOLD HIM THAT WHEN HE PAID HE WOULD GIVE HIM THE RECEIPT. HE DID NOT PAY LATER NOR WAS HE ASKED TO PAY BY LALONDE. HE NEVER GOT A RECEIPT. LALONDE DID NOT RECALL VAILLANCOURT NOR THE TRANSACTION IN QUESTION, EXCEPT THAT HE REMEMBERED THE CARD WAS ONE OF A NUMBER OF CARDS SIGNED UP IN A BUNKHOUSE. LALONDE WAS CERTAIN THAT THE MONEY WAS PAID BECAUSE HIS PRACTICE WAS NOT TO PUT IN A CARD UNTIL HE RECEIVED PAYMENT. HE WOULD NOT GET A PERSON TO SIGN THE RECEIPT, NOR WOULD HE HIMSELF SIGN IT, UNTIL THE MONEY WAS PAID AND, AS THE CARD WENT THROUGH, VAILLANCOURT MUST HAVE PAID.

VAILLANCOURT'S EVIDENCE WAS CLEAR-CUT AND UNSHAKEN IN CROSS-EXAMINATION, AND WE HAVE NO REASON TO DOUBT HIS TESTIMONY. AS OPPOSED TO THIS, WE HAVE THE COLLECTOR UNABLE TO RECALL THE TRANSACTION AND HAVING TO RELY ON HIS PRACTICE. UNLIKE SOME OTHER INCIDENTS WHERE WE HAD ADDITIONAL FACTORS WHICH SWUNG THE PENDULUM IN FAVOUR OF PRACTICE, THERE IS NOTHING OF THAT SORT HERE. IN THESE CIRCUMSTANCES, WE MUST FIND THAT VAILLANCOURT DID NOT PAY ANY MONEY ON HIS OWN BEHALF. LALONDE WAS AN EMPLOYEE OF INCO AT THE TIME HE WAS SIGNING UP MEMBERS FOR MINE MILL. HE WAS A VOLUNTARY ORGANIZER AND HAD NOT HELD OFFICE IN THE APPLICANT UNION. HE STATED THAT HE SIGNED UP BETWEEN 20 AND 30 PERSONS, WAS PAID SOME EXPENSE MONEY FOR BUS FARE AND MEALS, BUT WAS NOT PAID FOR ANY TIME OFF. THERE WERE 24 CARDS SUBMITTED BEARING HIS SIGNATURE AS COLLECTOR, 4 OF THE CARDS BEING "LOST" CARDS.

The next case to be considered is that of Beaulieu who testified that he signed the card at his home on Saturday, May 22nd, 1965 but though requested by the collector, Cribbs, to pay on subsequent occasions, did not do so. One of these occasions, he claimed, was at an IGA store approximately a week after he signed the card, although, according to Beaulieu, it was not on a Saturday. Both the card and receipt are dated May 22nd, 1965. Beaulieu could not say if the dates were inserted by Cribbs on the card after Beaulieu signed because after signing he gave the card to Cribbs who filled something in on the card and kept it. He did not recall putting the dates in and said that "they do not appear to be in my handwriting". Beaulieu admitted receiving a

REGISTERED LETTER (ABOUT WHICH MORE WILL BE SAID LATER IN THIS DECISION) FROM MINE MILL. HE CLAIMED HE GOT IT A WEEK OR TWO AFTER THE IGA MEETING WITH CRIBBS.

CRIBBS AGREED THAT WHEN HE SIGNED UP BEAULIEU THE LATTER DID NOT PAY AND THEREFORE, ACCORDING TO CRIBBS, HE DID NOT PUT IN THE DATES ON THE CARD AND RECEIPT. HE WENT ON TO SAY THAT ON SATURDAY, THE 22ND OF MAY, HE RECEIVED A DOLLAR FROM BEAULIEU ON THE MAIN STREET IN CONISTON BETWEEN THE BANK AND THE IGA STORE WHERE BEAULIEU'S CAR WAS PARKED. HE FURTHER TESTIFIED THAT THE DATES ON THE CARD AND RECEIPT WERE IN HIS HANDWRITING. THIS TESTIMONY WITH RESPECT TO THE TIME, DATE AND LOCATION OF THE MEETING BETWEEN BEAULIEU AND CRIBBS IS CORROBORATED BY ANOTHER WITNESS, HENRY, WHO ALSO CORROBORATED, IN THE MAIN, CRIBB'S TESTIMONY WITH RESPECT TO THE PAYMENT OF THE DOLLAR. IT IS CLEAR THAT THE DATES ON THE CARD AND RECEIPT ARE IN CRIBB'S HANDWRITING. IT IS ALSO CLEAR THAT BEAULIEU'S TESTIMONY WITH RESPECT TO HIS VERSION OF THE TIMETABLE OF EVENTS CANNOT STAND SINCE IT WOULD PUT THE RECEIPT OF THE REGISTERED LETTER BY BEAULIEU WELL INTO JUNE, DESPITE THE FACT THAT THE LETTER WAS DATED AND MAILED ON MAY 28TH. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE ACCEPT CRIBB'S EVIDENCE WHERE IT DIFFERS FROM THAT OF BEAULIEU AND FIND THAT A DOLLAR WAS PAID BY BEAULIEU TO CRIBBS AND THE CARD IS ACCORDINGLY A GOOD CARD.

THE LAST CASE IN THE CATEGORY OF "DISPUTED NON-PAYS" CONCERNED James Closs. Altogether apart from the Ranger collection fund incident (of WHICH MORE BELOW) HIS EVIDENCE WAS CONFUSING. THUS, FOR EXAMPLE, HIS "FINAL" TIME-TABLE OF EVENTS APPEARED TO BE AS FOLLOWS: HE COMMENCED WORK ON OCTOBER 4TH. 1964. Some 10 days later He signed the Mine Mill card in QUESTION. TWO WEEKS AFTER THIS HE WAS GIVEN A RECEIPT BY LANDRY, THE COLLECTOR. WHICH RECEIPT HE SIGNED ALTHOUGH UP TO THIS POINT NO MONEY HAD CHANGED HANDS. A WEEK LATER (AT FIRST HE PUT IT AS A MONTH LATER) HE SIGNED HIS NAME TO A LIST BEING CIRCULATED BY LANDRY IN WHICH HE PLEDGED TO CONTRIBUTE A DOLLAR TO A FUND BEING RAISED FOR ONE, RENE RANGER, AN EMPLOYEE HURT IN AN AUTOMOBILE ACCIDENT. SOME EIGHT SHIFTS LATER HE PAID A DOLLAR TO LANDRY, NOT FOR THE MINE MILL CARD, ACCORDING TO CLOSS, BUT IN FULFILMENT OF HIS PLEDGE RESPECTING RANGER. THE CARD AND RECEIPT ARE BOTH DATED OCTOBER 20TH, 1964 AND THE DATES ARE NOT IN CLOSS'S HANDWRITING. ALTHOUGH HE ADMITTED THAT IT WAS POSSIBLE THAT HE SIGNED THE RECEIPT ON OCTOBER 20TH, THIS STILL DOES NOT FIT IN WITH THE FACT THAT THE RANGER LIST OF PLEDGES, WHICH THE WITNESS WHITMORE signed and which Closs claimed to have signed, was dated October 16th and was IN FACT SIGNED BY WHITMORE ON THAT DATE. MOREOVER, WE FIND IT VERY DIFFICULT TO BELIEVE CLOSS S CLAIM THAT TWO WEEKS AFTER HE SIGNED THE CARD, HE SIGNED, AND WAS GIVEN. A RECEIPT ALTHOUGH HE DID NOT PAY. LANDRY WAS SUPPOSED TO HAVE SAID TO HIM ON THIS OCCASION THAT HE COULD PAY LATER AND THEN LANDRY WOULD TURN THE CARD IN. WHEN CLOSS FIRST SIGNED THE CARD, LANDRY WAS ALLEGED TO HAVE SAID TO HIM THAT IF HE DID NOT PAY, THE CARD WOULD BE TORN UP. AS WE SAID ABOVE, THIS ASPECT OF HIS EVIDENCE STRIKES US AS A MOST UNLIKELY STORY AND WHEN VIEWED ALONG WITH HIS TIME-TABLE OF EVENTS WOULD, AT THE VERY LEAST, RAISE SOME DOUBTS IN OUR MINDS.

On the other hand, Closs's claim, that the dollar was handed to Landry as his pledge to the Ranger fund but that Landry said he would apply it instead to the Mine Mill card, was corroborated by Whitmore. Now there are certain discrepancies between Closs's and Whitmore's evidence. Thus for example, according to Closs when he handed the dollar to Landry and Landry said

HE WOULD APPLY IT TO THE MINE MILL CARD, CLOSS SAID "I DIDN'T SAY ANYTHING TO LANDRY EXCEPT THAT IT'S NOT FOR THAT PURPOSE." THERE IS NO SUGGESTION BY CLOSS THAT THERE WAS ANY FURTHER DISCUSSION BETWEEN HIMSELF AND LANDRY. WHITMORE TESTIFIED THAT WHILE IN THE SHOWER HE OVERHEARD CLOSS SAY TO LANDRY, "HERE'S THE DOLLAR FOR THE COLLECTION" AND LANDRY'S REPLY THAT HE WOULD PUT IT ON THE MINE MILL CARD. WHITMORE THEN WENT ON TO SAY THAT HE COULD NOT MAKE OUT ANY FURTHER CONVERSATION OTHER THAN THAT THEY WERE ARGUING WHILE WALKING AWAY TOWARDS THE GATE. AGAIN, WHITMORE RELATED ANOTHER CONVERSATION WHICH HE CLAIMED TO HAVE OVERHEARD IN WHICH CLOSS ASKED LANDRY TO DESTROY HIS CARD. CLOSS, IN HIS TESTIMONY, MADE NO REFERENCE TO ANY SUCH INCIDENT, A SOMEWHAT SURPRISING OMISSION IF IT IN FACT TOOK PLACE.

APART FROM THESE DISCREPANCIES, HOWEVER, AND GIVING CLOSS THE BENEFIT OF THE DOUBT ON THE DATES SINCE THE TRANSACTION TOOK PLACE SOME TIME AGO, WE MIGHT HAVE BEEN DISPOSED TO ACCEPT CLOSS'S EVIDENCE AS OPPOSED TO LANDRY'S CLAIM THAT CLOSS SIGNED UP UNDERGROUND, PAID THE DOLLAR THE SAME NIGHT WHEN THEY CAME TO THE SURFACE AND WAS GIVEN HIS RECEIPT THE NEXT DAY, WERE IT NOT FOR ONE INCONTROVERTIBLE FACT. CLOSS DID NOT SIGN THE PLEDGE LIST FOR THE RANGER FUND. WHITMORE SIGNED, BUT CLOSS DID NOT. LANDRY TESTIFIED THAT CLOSS REFUSED TO SIGN, SAYING THAT HE HAD JUST STARTED WORK AND DID NOT KNOW RANGER. WHATEVER ELSE THIS MAY DO TO CLOSS'S TESTIMONY, IT DESTROYS THE FOUNDATION FOR HIS CLAIM THAT HE GAVE A DOLLAR TO LANDRY FOR THE RANGER FUND. THAT THERE IS NOTHING WRONG WITH THE CLOSS CARD.

BY WAY OF SUMMARY, THEN, OF THE EIGHT CARDS IN THE DISPUTED NON-PAY CATEGORY, WE FIND ONLY TWO, THOSE OF JEANVEAU AND VAILLANCOURT, TO BE NON-PAYS. IN BOTH CASES THE COLLECTORS ADVANCED THE MONEY AS A LOAN. ONE ATTEMPTED TO RECOVER IT, UNSUCCESSFULLY, THE OTHER DID NOT. BOTH COLLECTORS WERE EMPLOYEES OF INCO AND VOLUNTARY ORGANIZERS FOR MINE MILL IN WHICH NEITHER HAVE HELD OFFICE. ONE RECEIVED EXPENSE MONEY, THE OTHER DID NOT. IN ONE CASE THE LOAN WAS TO A STRANGER, IN THE OTHER TO A PREVIOUS ACQUAINTANCE. IN ONE OTHER CASE, THAT INVOLVING KILLIN, THERE IS A POSSIBLE INSTANCE OF NO FINANCIAL SACRIFICE, A FACT WHICH WE ARE NOT PREPARED TO FIND WAS KNOWN TO THE COLLECTOR.

# CATEGORY 6

The Last category of cards to be considered is that involving the collector, Wilfred Girard. There were six incidents in this category, three of which, namely Godin, Brooks and Gignac, also involved Wilfred Girard's brother, David. We intend to start with the transactions involving the brothers Girard.

IT IS NOT WITHOUT SIGNIFICANCE THAT THE THREE CARDS INVOLVED WERE ALL SIGNED UP JUST A FEW DAYS PRIOR TO THE DATE THE APPLICATION WAS MADE TO THE BOARD, THAT IS, MAY 11th, 1965. GODIN WAS SIGNED ON MAY 5th, GIGNAC ON MAY 6th, AND BROOKS ON MAY 9th. It has been the Board's experience in the PAST THAT CORNERS ARE APT TO BE CUT AT SUCH A TIME (SEE CANADIAN WESTINGHOUSE COMPANY LIMITED, (1954) CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-1954, ¶17,089 AT P. 13,161; C.L.S. 76-461). FURTHER, IN ALL THREE CASES THE EMPLOYEE WHOM WILFRED GIRARD WAS ATTEMPTING TO SIGN SAID HE HAD NO MONEY. IN ALL THREE CASES, ACCORDING TO BOTH WILFRED AND DAVID GIRARD, THE DOLLAR WAS PUT UP BY DAVID. GODIN DENIED THIS AND SAID WILFRED GIRARD TOOK

MONEY FROM HIS OWN POCKET, ASKED HIS BROTHER, DAVID, TO GO OUT AND GET CHANGE AND, HAVING RECEIVED THE CHANGE, THEN HANDED GODIN A DOLLAR. GODIN GAVE IT BACK TO WILFRED. MRS. GODIN WHO WAS PRESENT CORROBORATED HER HUSBAND'S VERSION. IN THE BROOKS'S CASE THERE IS NOTHING TO SUGGEST THAT THE MONEY DID NOT COME FROM DAVID GIRARD BECAUSE EVEN ON BROOKS'S VERSION OF WHAT HAPPENDED, WILFRED WENT BACK TO HIS BROTHER DAVID'S HOUSE TO GET THE DOLLAR FROM HIS BROTHER AND TOLD BROOKS HE COULD REPAY DAVID. IN THE GIGNAC CASE ALL THREE AGREED THE MONEY CAME FROM DAVID ALTHOUGH IN AN EARLIER STATEMENT TO ONE OF THE BOARD'S INVESTIGATORS WHICH HE HAD TROUBLE EXPLAINING AWAY, GIGNAC SAID THAT WILFRED GIRARD PUT UP THE MONEY HIMSELF.

IN ALL THREE CASES WHILE THE THREE BORROWERS AGREED TO REPAY. NO DEFINITE ARRANGEMENTS OF ANY KIND WERE MADE ABOUT PAYMENT AND NO TIME LIMITS SET. IT WAS ON THE BASIS OF "YOU CAN PAY ME WHEN YOU GET IT OR WHEN YOU SEE ME" AND THIS EVEN IN THE CASE OF GODIN. WHO WAS A STRANGER TO THE GIRARDS. IN TWO CASES NO ATTEMPT WAS MADE TO COLLECT THE DOLLAR UNTIL JUST BEFORE THE PARTICULAR BOARD HEARING AT WHICH THE CASE WAS TO BE HEARD. IN GODIN'S CASE NO EFFORT AT ALL WAS MADE BY EITHER OF THE GIRARDS TO COLLECT. DAVID GIRARD TESTIFIED HE PROBABLY WOULD NOT HAVE RECOGNIZED GODIN AGAIN. DAVID GOT HIS DOLLAR BACK FROM BROOKS JUST TWO DAYS BEFORE THE HEARING, WHICH WOULD MAKE IT AROUND JULY 13TH. AND THIS DESPITE THE FACT THAT BROOKS LIVED ACROSS THE STREET FROM DAVID GIRARD. SIMILARLY. IN THE CASE OF GIGNAC. IF THE MONEY WAS REPAID AT ALL, (AND THERE IS CONSIDERABLE DOUBT ABOUT THIS. HAVING REGARD TO THE DIFFERENT VERSIONS GIVEN BY GIGNAC AND DAVID GIRARD AS TO THE DETAILS OF THE REPAYMENT) IT WAS NOT PAID UNTIL AUGUST 1ST, ACCORDING TO DAVID GIRARD, OR DURING THE LAST WEEK OF JULY. ACCORDING TO GIGNAC. AGAIN, IN NONE OF THE THREE CASES DID WILFRED GIRARD EVER INQUIRE OF HIS BROTHER DAVID WHETHER THE LATTER HAD BEEN REPAID.

ASSUMING FOR THE MOMENT THAT IN ALL THREE CASES DAVID DID MAKE THE LOAN, THERE ARE STILL PORTIONS OF THE TESTIMONY OF THE GIRARDS WHICH WE FIND DIFFICULT TO ACCEPT. FOR EXAMPLE, WILFRED GIRARD WOULD HAVE US BELIEVE THAT HE DID NOT KNOW WHY BROOKS WANTED TO SEE HIS BROTHER DAVID. DESPITE THE FACT THAT HE KNEW BROOKS WAS BROKE AND WOULD HAVE TO BORROW, AND WHEN HE CAME BACK AFTER HIS BROTHER HAD BEEN TO BROOKS'S HOME, THERE WAS A DOLLAR ON THE TABLE. ACCORDING TO DAVID, THE LATTER TOLD WILFRED THAT BROOKS WANTED MONEY, BUT WILFRED SAYS IN CROSS-EXAMINATION THAT HE DID NOT KNOW OF THE "POSSIBILITY OF BORROWING". IN THE GIGNAC INCIDENT IT IS DIFFICULT TO ACCEPT WILFRED S EVIDENCE THAT HE DID NOT KNOW WHERE HIS BROTHER WAS. ALTHOUGH GIGNAC ! EVIDENCE WAS EVASIVE IN THE EXTREME, HE CLEARLY KNEW WHERE DAVID WAS AND THERE IS NO DOUBT IN OUR MINDS THAT WILFRED KNEW TOO. FURTHER, ACCORDING TO BOTH GIGNAC AND WILFRED, GIGNAC TOLD WILFRED HE WAS GOING TO BORROWN FROM "DAYE". YET WILFRED TESTIFIED THAT WHEN GIGNAC RETURNED WITH THE DOLLARD "IT NEVER ENTERED HIS MIND WHERE IT CAME FROM". DAVID GIRARD ADMITTED KNOWING THE PURPOSE OF THE LOAN IN THE GODIN CASE ALTHOUGH AT A LATER HEARING HE SAID IN A GENERAL STATEMENT, "I DIDN'T LEND FOR CARDS" - "I DIDN'T KNOW". AGAIN HE DENIED KNOWING THAT WILFRED WAS ATTEMPTING TO SIGN UP BROOKS. HE COULD NOT RECALL IF BROOKS TOLD HIM WHY HE WANTED TO BORROW A DOLLAR. IN THE GIGNAC CASE HE DENIED KNOWING WHY GIGNAC WANTED THE DOLLAR OR THAT WILFRED WAS ATTEMPTING TO SIGN UP GIGNAC. THIS WE CANNOT ACCEPT. ON WILFRED'S OWN TESTIMONY, BOTH WERE OUT CAMPAIGNING THAT DAY AND WILFRED HIMSELF SAYS THAT HIS BROTHER WOULD KNOW WHY HE WANTED TO SEE GIGNAC. THESE EVASIONS AND DENIALS ARE DIFFICULT TO UNDERSTAND IN THE LIGHT OF WILFRED GIRARD'S TESTIMONY IN THE GODIN CASE (THE FIRST OF THE THREE "BROTHER TRANSACTIONS" HEARD BY THE BOARD) TO THE EFFECT THAT HE KNEW HE COULD NOT MAKE THE LOAN BUT SAW NOTHING WRONG WITH HIS BROTHER ADVANCING THE MONEY.

IN SUM, THEN, IF WE ASSUME IN ALL THREE CASES THAT A LOAN WAS MADE BY DAVID GIRARD, WE WOULD HAVE NO HESITATION IN FINDING THAT WHEN THE EMPLOYEE SAID HE DID NOT HAVE THE MONEY, WILFRED SUGGESTED HE BORROW FROM DAVID AND DAVID WILLINGLY PUT UP THE MONEY WITHOUT ANY SERIOUS INTENTION AT THE TIME OF TRYING TO RECOVER THE DOLLAR.

IN HIS EARLIER TESTIMONY DAVID GIRARD ADMITTED TO ONLY TWO LOANS, GODIN AND BROOKS, AND TO ONE OTHER (NOT GIGNAC'S) WHICH HE CLAIMS WAS PAID BACK. ON HIS SECOND APPEARANCE IN THE WITNESS BOX HE ADMITTED TO THREE OR FOUR, PLUS AN ADDITONAL ONE THAT WAS NEVER REPAID. WHEN ASKED IF WILFRED HAD EVER MADE A LOAN ON A CARD HE, DAVID, WAS SIGNING UP, HIS ANSWER WAS, "THERE COULD BE ONE. | DON'T REMEMBER". IN REFLECTING ON THESE DENIALS, EVASIONS AND CHANGES IN TESTIMONY OF THE GIRARDS, IT IS APPARENT THAT WHEN CREDIBILITY IS IN ISSUE, LITTLE WEIGHT CAN BE ATTACHED TO THEIR TESTIMONY.

WE HAVE PROCEEDED ON THE ASSUMPTION THAT LOANS WERE MADE IN ALL THREE CASES BY DAVID GIRARD. WAS THIS SO IN THE GODIN CASE? WE CAN SEE NO REASON WHY THE GODINS WOULD LIE ON THIS QUESTION. ON THE OTHER HAND, WILFRED ADMITTED HE KNEW HE COULT NOT MAKE THE LOAN HIMSELF AND IT WOULD THEREFORE BE TO HIS ADVANTAGE, AT LEAST IN HIS OWN MIND, TO MAKE IT APPEAR THAT THE LOAN WAS FROM DAVID. IN ALL THE CIRCUMSTANCES AND HAVING REGARD TO OUR OTHER FINDINGS WITH RESPECT TO THE CREDIBILITY OF THE GIRARDS, WE ACCEPT THE GODIN VERSION OF WHAT HAPPENED — THAT IS, THAT THE MONEY WAS WILFRED GIRARD'S AND THAT AFTER THE BILL WAS CHANGED WILFRED HANDED GODIN A DOLLAR, WHO IN TURN HANDED IT BACK TO WILFRED. WHILE THERE IS SOME DOUBT IN OUR MINDS ABOUT THE GIGNAC INCIDENT, WE ARE NOT ENTITLED TO USE GIGNAC'S PRIOR INCONSISTENT STATEMENT TO PROVE THE TRUTH OF THE MATTER STATED ANS SO WE ARE TREATING THIS INCIDENT AS A LOAN MADE BY DAVID AND NOT WILFRED BUT, AS WE FOUND ABOVE, WITH KNOWLEDGE ON THE PART OF BOTH BROTHERS.

WE TURN NOW TO THE OTHER THREE INCIDENTS INVOLVING WILFRED GIRARD. IN THE FIRST OF THESE, THE JOHNSON CASE, THERE IS A DIRECT CONFLICT BETWEEN JOHNSON AND GIRARD AS TO WHETHER THE DOLLAR WAS PAID. JOHNSON MET GIRARD FOR THE FIRST TIME ON APRIL 21ST, 1965, A WEDNESDAY, THE DAY HE SIGNED THE MINE MILL APPLICATION CARD AND RECEIPT. HE TOLD GIRARD HE WOULD NOT BE PAID UNTIL MONDAY AND IT WAS AGREED GIRARD WOULD COME TO JOHNSON S HOUSE TO COLLECT. JOHNSON TESTIFIED HE NEVER SAW WILFRED GIRARD AGAIN. GIRARD MAINTAINED HE CALLED SEVERAL TIMES BUT EITHER NO ONE WAS AT HOME OR JOHNSON WAS NOT AT HOME. FINALLY, ACCORDING TO GIRARD, IT WAS GETTING VERY CLOSE TO THE DATE OF THE APPLICATION, ONLY ONE OR TWO DAYS BEFORE, SO HE GOT HOLD OF ONE, CAMPBELL, WHO DROVE HIM TO JOHNSON S HOUSE. JOHNSON CAME TO THE DOOR AND PAID THE DOLLAR AND GIRARD GAVE HIM A RECEIPT. ON BEING RECALLED TO THE STAND, JOHNSON MOST EMPHATICALLY DENIED THIS. CAMPBELL WAS NOT CALLED AS A WITNESS AND NO REASON WAS GIVEN AS TO WHY HE WAS NOT PRODUCED. JOHNSON WAS RELATIVELY UNSHAKEN IN CROSS-EXAMINATION AND WE HAVE NO REASON FOR DOUBTING HIS EVIDENCE. IN THE CIRCUMSTANCES AND HAVING REGARD TO OUR EARLIER FINDINGS ON CREDIBILITY, WE FIND THAT JOHNSON DID NOT PAY THE DOLLAR, ALTHOUGH WILLING TO DO SO.

IN THE SECOND INCIDENT, WE HAVE AN ENTIRELY DIFFERENT SITUATION. A CARD WAS SUBMITTED FOR ONE, JOHN GUDZ. THE CARD BORE GUDZ'S EMPLOYMENT NUMBER AND ADDRESS. IT WAS NOT SIGNED BY GUDZ BUT BY SOMEONE ELSE. IT IS CLEAR THAT WHOEVER WROTE THE WORDS "JOHN GUDZ" ON THE CARD AND RECEIPT WAS NOT ATTEMPTING TO SIMULATE GUDZ'S SIGNATURE. GUDZ TESTIFIED THAT HE HAD NEVER BEEN APPROACHED BY GIRARD TO SIGN. HE KNEW GIRARD, HAVING WORKED WITH HIM IN 1952. GIRARD THOUGHT IT WAS EARLIER THAN 1952 BUT WENT ON TO SAY HE HAD KNOWN GUDZ ONLY AS "JOHN". HE DID NOT KNOW HIS LAST NAME. THE CARD BEARS THE DATE

April 21st, 1965, and according to Girard was one of eight or nine signed up that day in a bank. April 21st was a Tuesday and it was therefore a regular pay-day for the respondent's employees. Although handwriting specimens of Girard were taken, no evidence was called to suggest that Girard wrote the words "John Gudz" on the card and receipt and, after examining the specimens filed, we are satisfied that Girard did not do so. While we have not been impressed with Girard's credibility, we are not prepared to find on the evidence before us that Girard submitted the card knowing that it was not signed by John Gudz. On the other hand, once Girard found out that he had been duped, he made no serious attempt to discover the culprit.

THE FINAL INCIDENT IN THE GIRARD SERIES IS A DISTURBING ONE. IT CONCERNS ON THE ONE HAND CHARTRAND, WHO WAS ALLOWED TO RETURN TO THE WITNESS STAND TO CONFESS THAT HE HAD LIED ON HIS FIRST APPEARANCE BEFORE THE BOARD, AND ON THE OTHER HAND WILFRED GIRARD, WHOSE EVIDENCE THE BOARD HAS FOUND UNRELIABLE IN SEVERAL OTHER CASES. WE DO NOT DEEM IT NECESSARY TO CONSIDER THIS CASE FURTHER IN VIEW OF FINDINGS RESPECTING GIRARD WHICH WILL BE SET OUT LATER IN THIS DECISION.

OUR CONCLUSIONS RESPECTING THE GIRARD CATEGORY ARE AS FOLLOWS: ONE CARD (GODIN'S) WHERE WILFRED GIRARD LOANED MONEY TO AN EMPLOYEE AND WAS NOT REPAID AND DID NOT ATTEMPT TO COLLECT; ONE CARD (JOHNSON'S) WHERE WILFRED GIRARD FAILED TO COLLECT A DOLLAR ALTHOUGH IT HAD BEEN PROMISED; ONE CARD (GUDZ) NOT SIGNED BY THE PERSON WHOSE SIGNATURE IT PURPORTED TO BE, ALTHOUGH NOT TO THE KNOWLEDGE OF GIRARD; TWO CARDS (BROOKS AND GIGNAC) WHERE DAVID GIRARD, WITH THE KNOWLEDGE OF AND AT THE SUGGESTION OF HIS BROTHER WILFRED, ADVANCED THE DOLLAR, KNOWING THE PURPOSE FOR WHICH IT WAS TO BE USED BUT WITHOUT ANY SERIOUS INTENTION OF SECURING REPAYMENT. IF IN FACT IN SOME WAY OR ANOTHER THE DOLLAR IN THE GODIN CASE WAS ACTUALLY PUT UP BY DAVID, THE GODIN CARD WOULD THEN BE IN THE SAME CATEGORY AS THE BROOKS AND GIGNAC CARDS. IN ADDITION TO THE ABOVE, IT SEEMS CLEAR THAT THERE WERE OTHER CASES OF LOANS BY DAVID GIRARD, AND IN THE REVERSE SITUATION, QUITE LIKELY ONE BY WILFRED FOR ONE OF DAVID'S CARDS.

WILFRED GIRARD, AN EMPLOYEE OF THE RESPONDENT, WAS A VOLUNTARY ORGANIZER WHO RECEIVED \$250 TO \$300 FOR EXPENSES INCURRED AS AN ORGANIZER OVER A PERIOD OF A YEAR. HE HAS NEVER HELD ANY ELECTED OR APPOINTED OFFICE WITH THE APPLICANT. SOME YEARS AGO HE TOOK A LEAVE OF ABSENCE FROM THE RESPONDENT AND ACTED AS A PAID ORGANIZER FOR THE APPLICANT UNION ON A COMPAIGN INVOLVING ANOTHER EMPLOYER. OUR COUNT SHOWS 108 CARDS WERE SUBMITTED BEARING WILFRED GIRARD'S SIGNATURE AS A COLLECTOR, 7 OF WHICH WERE "LOST" CARDS AND 3 OF WHICH WERE WITHDRAWN BY THE APPLICANT AFTER THEY HAD BEEN FILED WITH THE BOARD. DAVID GIRARD, AN EMPLOYEE OF THE RESPONDENT, WAS A VOLUNTARY ORGANIZER WHO GOT EXPENSES FOR GAS AND MEALS OVER THE LAST TWO MONTHS OF THE CAMPAIGN. HE HAS NEVER HELD OFFICE IN THE APPLICANT UNION. ABOUT A YEAR AGO WHILE ON A HOLIDAY IN NEW BRUNSWICK HE WORKED OVER A PERIOD OF FROM TWO TO THREE WEEKS AS AN ORGANIZER FOR THE PARENT UNION OF THE APPLICANT. HE WAS NOT PAID ANY SALARY BUT DID RECEIVE EXPENSES FOR HIS HOTEL, MEALS AND TRANSPORTATION. SIXTY-NINE CARDS BEARING HIS SIGNATURE AS COLLECTOR WERE FILED WITH THIS APPLICATION BY MINE MILL. Two of the 69 cards were "Lost" cards.

This completes our analysis of the evidence and findings thereon with respect to 33 of the cards as to which we heard evidence and argument. For purposes of the record, however, we point out that we heard evidence respecting a card for one, Loiselle, as to which no representations were made and it is our

FINDING THAT THIS IS A GOOD CARD. FURTHER, NO REPRESENTATIONS WERE MADE ON THE KULEBA CARD. IT WILL BE RECALLED THAT NO EVIDENCE WAS HEARD RESPECTING THIS CARD BECAUSE OF MR. KULEBA'S UNTIMELY DEATH. HIS STATEMENT TO THE BOARD'S EXAMINER WAS READ OUT TO THE PARTIES AT ONE OF THE HEARINGS. AT THAT TIME THE INTERVENER STATED THAT IT WOULD SERVE NO USEFUL PURPOSE TO CALL THE COLLECTOR. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE CONTENTS OF THE EXAMINER'S REPORT WE FIND THE KULEBA CARD TO BE IN ORDER.

#### SUMMARY OF FINDINGS

IT IS CONVENIENT AT THIS POINT TO SUMMARIZE BRIEFLY THE IRREGULARITIES WE HAVE FOUND TO EXIST AMONG THE 34 QUESTIONED CARDS. THE DATES ON ONE CARD WERE CHANGED AFTER THE CARD WAS TURNED IN TO MINE MILL BY THE COLLECTOR. ONE CARD WAS SIGNED BY A PERSON, UNKNOWN, OTHER THAN THE PERSON WHOSE SIGNATURE IT PURPORTED TO BE. THERE WERE 10 CASES OF UNRECOVERED LOANS BY COLLECTORS, 2 OF WHOM LOANED ON 2 OCCASIONS. THERE WERE 5 INCIDENTS OF LOANS OR GIFTS BY THIRD PARTIES WITH THE COLLECTOR IN 3 CASES HAVING KNOWLEDGE OF THE FACTS. THE TOTAL NUMBER OF CARDS INVOLVED IS 17. IT IS POINTED OUT THAT THESE 17 CARDS REPRESENT THE ONLY CARDS WHICH, ON THE EVIDENCE BEFORE US, HAVE BEEN FOUND TO CONTAIN IRREGULARITIES OUT OF ALL THOSE WHICH THE CHALLENGED BY THE INTERVENER AND, IN ADDITION, OUT OF THOSE WHICH THE BOARD ITSELF QUESTIONED.

### MINE MILL ORGANIZATIONAL CAMPAIGN

BEFORE PROCEEDING TO A CONSIDERATION OF WHAT CONSEQUENCES OUGHT TO FLOW FROM OUR FINDINGS SET OUT ABOVE, IT IS NECESSARY TO DESCRIBE CERTAIN FEATURES OF THE ORGANIZATIONAL CAMPAIGN CONDUCTED BY MINE MILL. THE CAMPAIGN BEGAN IN MAY, 1964 AND CONTINUED UNTIL MAY, 1965. IT SHOULD PERHAPS BE EXPLAINED THAT EVIDENCE OF MEMBERSHIP MORE THAN SIX MONTHS BUT LESS THAN A YEAR OLD IS ACCEPTED BY THE BOARD AS SUFFICIENT TO WARRANT THE ORDERING OF A REPRESENTATION VOTE BUT NOT TO THE GRANTING OF OUTRIGHT CERTIFICATION. THE UNCHALLENGED EVIDENCE BEFORE US IS THAT 725 VOLUNTARY ORGANIZERS PARTICIPATED IN THE CAMPAIGN of whom 516 actually procured cards as collectors. In addition, 7 national ORGANIZERS AND 2 OFFICERS OF THE APPLICANT WERE ENGAGED IN SIGNING UP EMPLOYEES AS MEMBERS, BUT THE TOTAL NUMBER OF CARDS WHICH THEY OBTAINED WOULD NOT EXCEED 200. Some 9 other members of the applicant's staff also participated in the CAMPAIGN BUT NOT AS ACTIVE ORGANIZERS. THE VOLUNTARY ORGANIZERS WERE EITHER PEOPLE WHO VOLUNTEERED FOR THE TASK OR ELSE WERE PERSUADED TO ACT. IN ADDITION TO THE ABOVE, TOWARD THE END OF THE CAMPAIGN, ANOTHER 109 PERSONS WERE ENLISTED AS ORGANIZERS AND THEY, OR SOME OF THEM, SIGNED UP FROM 1 TO 3 CARDS.

ORGANIZATION KITS CONSISTING, APPARENTLY, OF A SMALL NOTE BOOK AND WRITTEN INSTRUCTIONS, WERE ISSUED TO THE VOLUNTARY ORGANIZERS. IN ADDITION, THESE ORGANIZERS WERE INDIVIDUALLY BRIEFED AS TO THE PROPER PROCEDURES IN SIGNING UP EMPLOYEES AS MEMBERS. FURTHER INSTRUCTION WAS GIVEN FROM TIME TO TIME AT ORGANIZATIONAL MEETINGS. WHEN A VOLUNTARY ORGANIZER OBTAINED CARDS FROM MINE MILL, CAREFUL NOTE WAS MADE OF THE CARD NUMBERS AND HE SIGNED FOR THEM. AS CARDS WERE TURNED IN, THE NUMBERS OF THEM WERE RECORDED AND THE PERSON TURNING THEM IN SIGNED THE PAGE WHERE THE INFORMATION WAS RECORDED. THERE IS NO QUESTION THAT THE ORGANIZERS INVOLVED IN THE CAMPAIGN WERE PERSONS APPROVED BY MINE MILL.

Towards the latter part of the campaign the applicant "in order to make sure that all was correct" caused to be sent out a total of 8,052 registered

LETTERS TO PERSONS WHO ITS RECORDS, INCLUDING PHOTOSTATIC COPIES OF CARDS FILED WITH THE BOARD, SHOWED WERE MEMBERS. THE LETTER, ON THE STATIONERY OF THE APPLICANT WAS IN THE FOLLOWING TERMS:

OUR RECORDS INDICATE THAT YOU ARE AN EMPLOYEE OF INTERNATIONAL NICKEL COMPANY OF CANADA AND HAVE WITHIN THE LAST TWELVE MONTHS. SIGNED AN APPLICATION FOR MEMBERSHIP IN THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA) AND PAID ONE DOLLAR TO COMPLY WITH THE REQUIREMENTS OF THE ONTARIO LABOUR RELATIONS BOARD.

UNLESS WE HEAR FROM YOU WITHIN SEVEN DAYS FROM THE DATE OF MAILING OF THIS REGISTERED LETTER, WE WILL ASSUME THAT OUR RECORDS ARE CORRECT.

For your convenience, we are enclosing a stamped self-addressed envelope.

THERE IS, OF COURSE, NO NEED TO REPLY IF YOU AGREE THAT THE RECORDS ARE CORRECT.

FRATERNALLY YOURS.

"J. B. TESTER"
FINANCIAL SECRETARY,
LOCAL 598.

ENCL.

THE APPLICANT DID NOT SEND LETTERS TO PERSONS FOR WHOM IT FILED CERTIFICATES OF MEMBERSHIP BUT THE EVIDENCE IS THAT ALL BUT 29 OF THE 7,713 PERSONS FOR WHOM IT FILED APPLICATION CARDS AND RECEIPTS WERE SENT REGISTERED LETTERS. OF THIS 29, 23 WERE NOT SENT LETTERS BECAUSE OF A LACK OF A PROPER ADDRESS, AND THE OTHER 6 WERE OVERLOOKED FOR ONE REASON OR ANOTHER.

THE APPLICANT OBVIOUSLY ATTEMPTED TO MAKE EVERY EFFORT TO ENSURE THAT ALL PERSONS SHOWN ON ITS RECORDS AS MEMBERS AND FOR WHOM IT HAD FILED CARDS RECEIVED THE LETTER. THUS, WHERE REGISTERED LETTERS WERE RETURNED MARKED "UNCLAIMED", IT SENT LETTERS BACK FIRST CLASS MAIL RATHER THAN REGISTERED, SO AS TO GET OVER THE POSSIBILITY OF AN INTENDED RECIPIENT DELIBERATELY REFUSING TO ACCEPT REGISTERED MAIL. IT MAILED 234 SUCH LETTERS OF WHICH 47 WERE RETURNED THE SECOND TIME. MOST OF THE REGISTERED LETTERS (7,791) WERE SENT BETWEEN MAY 4TH, 1965 AND MAY 28TH, 1965, (THE TERMINAL DATE FOR THE APPLICATION WAS MAY 25TH, 1965). AFTER ACQUIRING ADDITIONAL INFORMATION ABOUT CHANGES IN ADDRESSES AND FOLLOWING A COMPLETE RECHECK OF ITS RECORDS, A FURTHER 261 REGISTERED LETTERS WERE MAILED OUT ON JUNE 7th, 8th and 9th by Mine Mill. FINALLY, THE EVIDENCE IS THAT EVEN PERSONS SIGNED UP AT THE VERY END OF THE CAMPAIGN WERE SENT LETTERS BECAUSE, AS WAS POINTED OUT, THE APPLICANT HAD UNTIL THE FIRST HEARING, NAMELY JUNE 15TH, TO ASK THE BOARD TO WITHDRAW PREVIOUSLY FILED EVIDENCE. AS THE SECOND COUNT WILL SHOW, CARDS WERE WITHDRAWN AS LATE AS JUNE 10TH. IT WOULD APPEAR THAT IN ADDITON TO THE 234 LETTERS RETURNED MARKED "UNCLAIMED", 412 CAME BACK MARKED "CHANGE OF ADDRESS" OR "UNKNOWN". AS A RESULT OF REPLIES RECEIVED, WHICH INCLUDED 1 CLAIM OF NON-SIGN AND 6 OF NON-PAY, AND, AFTER FURTHER INVESTIGATION, SEVERAL CARDS FILED WITH THE BOARD WERE WITHDRAWN. THE TOTAL NUMBER OF CARDS WITHDRAWN BY THE APPLICANT WAS 20 BUT ON THE EVIDENCE BEFORE US WE ARE UNABLE TO SAY HOW MANY

OF THESE WERE WITHDRAWN AS A RESULT OF REPLIES RECEIVED TO THE MINE MILL LETTERS AND HOW MANY FOR OTHER REASONS.

THE APPLICANT SUBMITTED AN ANALYSIS (EXHIBIT 48E) OF ITS REGISTERED LETTER CAMPAIGN IN RELATION TO THE 34 CARDS DEALT WITH EARLIER BY THE BOARD. LEAVING ASIDE THE CARD FOR LALONDE, WHICH INVOLVED AN ALTERATION IN DATES AFTER BEING HANDED IN BY THE COLLECTOR, THE RESULT OF THAT ANALYSIS AS IT APPLIES TO THE REMAINING 16 CARDS FOUND TO BE IN QUESTION BY THE BOARD FOLLOWS. IN THE CASE OF THE NON-SIGN, A LETTER WAS SENT TO GUDZ AND NO REPLY RECEIVED. GUDZ ADMITTED RECEIPT OF THE LETTER AND SAID HE DID NOT ANSWER IT. IN THE 10 CASES OF LOANS BY COLLECTORS, 8 LETTERS WERE MAILED TO WHICH NO REPLY WAS RECEIVED, ONE LETTER WAS RETURNED BECAUSE THE RECIPIENT REFUSED TO ACCEPT IT. AND ONE PERSON WAS NOT SENT A LETTER BECAUSE OF A SLIP-UP IN THE MINE MILL OFFICE. IN THE 5 CASES OF LOANS BY THIRD PARTIES, LETTERS WERE SENT TO 4 BUT NOT TO THE FIFTH BECAUSE THE ADDRESS ON THE CARD WAS INCOMPLETE. OF THE 4 SENT. 2 FAILED TO REPLY AND 2 REFUSED TO ACCEPT THE LETTERS. THE BOARD HEARD EVIDENCE FROM THE 15 PERSONS TO WHOM LOANS WERE MADE, RESPECTING THE RECEIPT BY THEM OF THE MINE MILL LETTERS AND WHAT ACTION THEY TOOK IN CONNECTION THEREWITH. THAT EVIDENCE CONTAINED NO SUBSTANTIAL DIFFERENCES FROM THE ANALYSIS PRESENTED TO THE BOARD BY THE APPLICANT IN EXHIBIT 48E.

THERE IS ONE OTHER MATTER ARISING OUT OF THE ANALYSIS WHICH MUST NOT BE OVERLOOKED. THE APPLICANT RECEIVED 3 REPLIES FROM THE 34 PERSONS WHOSE CARDS WERE BEING INVESTIGATED BY THE BOARD. TWO OF THE PERSONS (FLETCHER AND SPILCHEN) STATED THAT THEY HAD NOT PAID THE DOLLAR. AFTER INVESTIGATING THE CARDS, THE APPLICANT PERMITTED THEM TO STAND. THE BOARD HAS FOUND THAT THE CARDS IN QUESTION ARE GOOD CARDS. THE THIRD REPLY INDICATED THAT THE PERSON IN QUESTION (PHILLIPS) WISHED TO REVOKE HIS CARD. THIS CARD WAS ALSO PERMITTED TO STAND, AND QUITE PROPERLY SO, IN VIEW OF THE BOARD'S POLICIES CONCERNING REVOCATIONS. SUBSEQUENTLY AN ALLEGATION OF NON-PAY WAS MADE RESPECTING THIS THIRD CARD AND WE HAVE FOUND THAT THERE WAS NOTHING WRONG WITH THE CARD.

#### ARGUMENTS OF APPLICANT AND INTERVENER

THIS COMPLETES OUR REVIEW AND ANALYSIS OF THE EVIDENCE BEFORE THE BOARD, AND WE TURN NOW TO A CONSIDERATION OF WHAT CONSEQUENCES SHOULD FOLLOW FROM OUR FINDINGS. THE ARGUMENTS OF COUNSEL FOR THE APPLICANT AND INTERVENER (COUNSEL FOR THE RESPONDENT MADE NO SUBMISSION TO THE BOARD ON THIS ASPECT OF THE CASE) INDICATE A BASIC DIVERGENCE OF OPINION ON THE QUESTION OF THE POLICIES APPLICABLE TO A CASE OF THIS KIND. BRIEFLY STATED, THE APPLICANT'S POSITION IS THAT THERE IS NO EVIDENCE TO IMPLICATE ANY OFFICER OR RESPONSIBLE OFFICIAL OF THE APPLICANT IN ANY OF THE IRREGULARITIES WHICH MAY HAVE OCCURRED. NOR IS THERE ANY EVIDENCE THAT ANY OFFICER OR OFFICIAL HAD KNOWLEDGE OF ANY IRREGULARITIES. IF IRREGULARITIES OCCURRED, THEY WERE THE ACTS OF RANK-AND-FILE MEMBERS OR EMPLOYEES ONLY AND, ON THE BASIS OF THE WEBSTER AIR EQUIPMENT CASE, (1958) C.C.H. CANADIAN LAW REPORTS, TRANSFER BINDER 155-159, 916,110, C.L.S. 76-598, THE APPLICANT IS NOT AS SUCH RESPONSIBLE IN THE ABSENCE OF NOTICE OF IRREGULARITIES, OR ALTERNATIVELY, OF A WIDESPREAD PATTERN OF IRREGULARITY. IN A CASE INVOLVING SO MANY EMPLOYEES, CARDS AND ORGANIZERS, IT IS INEVITABLE, SO THE ARGUMENT GOES, THAT IRREGULARITIES WILL OCCUR. THE APPLICANT TOOK ACTIVE STEPS TO SEEK OUT ANY MISTAKES THAT MAY HAVE OCCURRED AND, WHEN IT FOUND THEM, WITHDREW THE CARDS. IT WAS HAMPERED IN THIS RESPECT BY THE ACTIONS OF THE INTERVENER S REPRESENTATIVES IN REQUESTING EMPLOYEES TO TURN OVER TO THE INTERVENER THE REGISTERED LETTERS SENT BY THE APPLICANT TO THE EMPLOYEES. IF INSTEAD OF MAKING THESE REQUESTS THE INTERVENER HAD INSTRUCTED THE EMPLOYEES TO RETURN THE LETTERS THEN, AFTER INVESTIGATION, ANY CARDS FOUND TO BE DEFECTIVE WOULD HAVE BEEN WITHDRAWN AND, IF THEY HAD NOT BEEN, THE INTERVENER WOULD HAVE BEEN ENTITLED TO FIX THE APPLICANT WITH KNOWLEDGE OF IMPROPRIETIES. ANY WIDESPREAD PATTERN MUST INVOLVE A REASONABLE NUMBER OF COLLECTORS. IN CONSIDERING WHAT IS A REASONABLE NUMBER THE BOARD HAS SAID IN A DECISION IN A CASE WHERE STEEL WAS SEEKING TO OBTAIN THE BARGAINING RIGHTS THEN HELD BY MINE MILL THAT IT IS PROPER TO CONSIDER "THE SIZE OF THE BARGAINING UNIT AND THE VAST NUMBER OF PERSONS INVOLVED IN THE CAMPAIGN". (SEE INTERNATIONAL NICKEL COMPANY OF CANADA LTD., O.L.R.B. MONTHLY REPORT, NOV. 1962, p. 299 AT P. 311, 63 C.L.L.C. \$16,284 AT p. 1182). KEEPING THIS IN MIND IT CANNOT BE SAID THAT THERE HAS BEEN ANY SUCH PATTERN IN THE PRESENT CASE, AND ACCORDINGLY, A VOTE SHOULD BE DIRECTED.

THE INTERVENER SUBMITS THAT, IN ACCORDANCE WITH ITS WELL-ESTABLISHED POLICIES, THE BOARD HAS NO ALTERNATIVE BUT TO DISMISS THE APPLICATION. IT ARGUES THAT IN AS MUCH AS THE OFFICERS AND OFFICIALS OF THE APPLICANT PLAYED AN INSIGNIFICANT PART IN THE ORGANIZATIONAL CAMPAIGN, SIGNING UP NOT MORE THAN 200 CARDS, THE APPLICANT TURNED THE CAMPAIGN OVER TO A GROUP OF ORGANIZERS WHOM IT APPROVED OR SELECTED AND FOR WHOSE ACTS IT MUST ACCEPT RESPONSIBILITY. IT WOULD BE WRONG TO ALLOW THE APPLICANT IN SUCH CIRCUMSTANCES TO CLAIM A "LIGHTER" ONUS BY REASONS OF THE FACT THAT THE COLLECTORS WERE "VOLUNTARY ORGANIZERS". BECAUSE TO DO SO WOULD MEAN THAT A UNION COULD ARGUE THAT IS OFFICIALS AND OFFICERS "KEPT THEIR HANDS IN THEIR POCKETS" AND THUS WAS NOT RESPONSIBLE FOR ANY ERRORS WHICH MAY HAVE BEEN COMMITTED. THE TRUE TEST IN SUCH CIRCUMSTANCES IS, "WERE THEY ACTING IN THE COURSE OF THEIR EMPLOYMENT?" IN THE PRESENT CASE ALL THE COLLECTORS WERE SIGNING UP MEMBERS AND COLLECTING MONEY, WHETHER PROPERLY OR IMPROPERLY, AND THIS WAS ALL WITHIN THE COURSE OF THE AUTHORITY GIVEN TO THEM. IN SUPPORT OF HIS POSITION COUNSEL REFERRED TO THE BOARD'S DECISIONS IN THE DOMINION STORES LTD. CASE, O.L.R.B. MONTHLY REPORT, DEC., 1964, P. 447, SLOUGH ESTATES (CAN.) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1965, P. 173, AND TO A DECISION OF THE BRITISH COLUMBIA COURT OF APPEAL IN UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA. LOCAL 1 v. HANKIN AND STRUCK FURNITURE LTD. ET AL, (1964) 48 D.L.R. (2D), 248.

COUNSEL FOR THE INTERVENER THEN GOES ON TO ARGUE THAT WHAT HAS OCCURRED IN THE PRESENT CASE IS NOT A CASE OF ISOLATED INCIDENTS BUT RATHER A PATTERN of Misconduct. He refers to the Howard Smith Paper Mills Ltd. Case, (1953) C.C.H. CANADIAN LABOUR LAW REPORTS, \$49-\$54 TRANSFER BINDER, \$17.068. C.L.S. 76-417 AND POINTS OUT IN ADDITION THAT, IN THE EARLIER INCO DECISION REFERRED TO ABOVE, THE BOARD FOUND ONLY "A FEW ISOLATED CASES". THERE IS NO PARALLEL IN THE PRESENT CASE. WHILE SOME OF THE INCIDENTS ARE ISOLATED, OTHERS ARE NOT, BECAUSE "THEY ARE RELATED THROUGH THE SAME COLLECTOR, THE SAME KNOWLEDGE AND THE SAME SCHEME! AND THIS DISTINGUISHES THE CASE FROM THE EARLIER INCO DECISION (SUPRA). AN EXAMINATION OF THE EVIDENCE RELATING TO THE 34 CARDS IN QUESTION INDICATES IN THE FIRST PLACE IRREGULARITIES FOR WHICH THE APPLICANT MUST ACCEPT RESPONSIBILITY AND WHICH, WHILE SMALL IN NUMBER, ARE SUFFICIENT TO CAST A DOUBT ON ALL THE APPLICANT'S EVIDENCE. FURTHERMORE, THERE IS, AT LEAST IN THE CASE OF THE CARDS INVOLVING THE GIRARDS, EVIDENCE OF DELIBERATE PATTERN AND A DELIBERATE ATTEMPT TO DECEIVE THE BOARD AND THIS, IN ITSELF, IS SUFFICIENT TO WARRANT DISMISSAL OF THE APPLICATION. WHEN TAKEN IN CONJUCTION WITH THE OTHER IRREGULARITIES, THERE CAN BE NO DOUBT IN THE MATTER EVEN THOUGH 34 CARDS

involve only 4/10ths of 1% of all the cards submitted by the applicant. This last argument of counsel for the intervener must be modified having regard to our finding that 17 and not 34 cards contain irregularities.

# CONSIDERATION OF BOARD POLICIES

IN VIEW OF THE ARGUMENTS OUTLINED ABOVE, IT IS NECESSARY TO EXAMINE THE BOARD POLICIES APPLICABLE TO MATTERS OF THIS KIND. THE BASIC PRINCIPLES ARE WELL SET OUT IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, SUPRA,:

... However, since the Board is compelled to rely to such an EXTENT ON EVIDENCE WHICH, BY THE VERY NATURE OF THINGS, IS NOT SUBJECT TO EXAMINATION BY THE PARTIES TO THE PROCEEDINGS (SEE SECTION 72(1) NOW SECTION 83(1) OF THE LABOUR RELATIONS ACT). IT MUST BE VERY CIRCUMSPECT IN ACCEPTING IT AND IT MUST INSIST ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE. ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT. IN DEALING WITH THIS SITUATION. THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (II) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IN SO FAR AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE. (1953) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 149-154, 917,067, C.L.S. 76-412, THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.

To this should be added one further reference to the RCA Victor Company Ltd. Case, supra, where, after dealing with the situation of a responsible officer or official of the union knowingly submitting a defective card, the Board went on to say:

... A SIMIALR RESULT MAY FOLLOW EVEN IN A CASE WHERE IT IS IMPOSSIBLE TO ESTABLISH THAT AN OFFICER OR OFFICIAL OF THE UNION HAD KNOWLEDGE OF THE IMPROPRIETY, BUT WHERE IT IS EVIDENT THAT HE WAS SO LAX IN REGARD TO THE WAY IN WHICH DOCUMENTARY EVIDENCE OF PAYMENT WAS OBTAINED THAT HE MAY REASONABLY BE TAKEN TO HAVE SHUT HIS EYES TO THE FACTS.

IT IS IMPORTANT TO KEEP IN MIND THE REASONING BEHIND THESE STATEMENTS OF PRINCIPLE WHICH HAVE BEEN REFERRED TO SO OFTEN IN THE BOARD'S JURISPRUDENCE. THE BASIC QUESTION DEALT WITH IN EVERY CASE OF NON-PAY OR NON-SIGN OR OTHER IRREGULARITY IS THE WEIGHT THAT OUGHT TO BE GIVEN THE EVIDENCE OF MEMBERSHIP IN THE CIRCUMSTANCES OF THE PARTICULAR CASE. IN MATTERS OF THIS KIND THE BOARD IS NOT CONCERNED WITH PENALIZING A UNION BUT RATHER WITH REPRESENTATION. SEE ECHLIN-UNITED OF CANADA LTD., O.L.R.B. MONTHLY REPORT, MAY, 1965, p. 91; THE HYDRO ELECTRIC COMMISSION OF THE CITY OF HAMILTON, (1958) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER, 155-159, 916, 120, C.L.S. 76-617. KEEPING THIS IN MIND, WHAT IS INTENDED BY THE STATEMENT IN THE WEBSTER AIR EQUIPMENT CASE THAT "...EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION. 117 CLEARLY. WHAT THE BOARD IS SAYING IS THAT THE ENTIRE EVIDENCE IS SUSPECT BECAUSE, HAVING REGARD TO THE DEPENDENCE OF THE BOARD ON THE DOCUMENTARY EVIDENCE SUBMITTED, HOW CAN IT RELY ON ANY EVIDENCE OF MEMBERSHIP WHICH SUCH AN OFFICER OR OFFICIAL HAS EITHER PERSONALLY OBTAINED OR WHICH WAS OBTAINED BY OTHERS IN ASSOCIATION WITH HIM OR UNDER HIS DIRECTION. HOWEVER, WE POINT OUT THAT THE BOARD DID NOT SAY THAT THIS RESULT FOLLOWS IN EVERY CASE WHERE A SINGLE DEFECTIVE CARD IS SUBMITTED WITH THE KNOWLEDGE OF A RESPONSIBLE OFFICER OR OFFICIAL. THE WORDS USED ARE "THE BOARD MAY COME TO THE CONCLUSTON" (EMPHASIS ADDED) AND OBVIOUSLY WHETHER IT DOES OR DOES NOT WILL DEPEND ON THE FACTS OF THE PARTICULAR CASE.

AGAIN, WHEN DEALING WITH A CASE INVOLVING "A PERSON OF LESSER RANK IN THE UNION ORGANIZATION" THE SAME BASIC QUESTION MUST BE CONSIDERED, THAT IS, THE EFFECT OF THE IRREGULARITY OR IRREGULARITIES ON THE OTHER EVIDENCE OF MEMBERSHIP SUBMITTED IN THE CASE. IF SUCH A PERSON WAS NOT RESPONSIBLE FOR OTHER CANVASSERS OR COLLECTORS THE BOARD, DEPENDING ON THE CIRCUMSTANCES, MAY MERELY DISALLOW THE CARD IN QUESTION OR MAY REJECT ALL OF THE CARDS SIGNED UP BY SUCH A PERSON AND THEN DEAL WITH THE CASE ON THE BASIS OF THE REMAINING EVIDENCE. IF SUCH A PERSON WAS RESPONSIBLE FOR THE ACTS OF OTHERS IN THE CAMPAIGN, THEN THE CARDS SIGNED UP BY SUCH OTHER PERSONS MAY ALSO BE SUSPECT. SEE, FOR EXAMPLE, HERSHEY CHOCOLATE OF CANADA, LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 73, THOMAS DELLELCE AND COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1962, P. 341, MAX FACTOR AND COMPANY CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 616.

However, in some circumstances, even the facts of rank and file canvassers may affect the weight to be given to evidence of membership apart from the evidence for which they were responsible and despite the fact that the irregularities were not known to responsible union officers or officials. Whether this result follows in any case will depend on how "widespread" is the pattern, in the words of the <u>RCA Victor Company Ltd. Case (supra)</u> or in the language of the <u>webster Air Equipment Case</u> (supra), "the nature of the Irregularity and the extent to which the objectionable practice was resorted to in the signing up of members". In other words, in the particular circumstances of a case, the Board may conclude that because of the extent of the objectionable practices by rank-and-filers, it is likely that such practices were used by others engaged in the campaign and, further, that if this is the case, the persons responsible for the campaign, if not directly involved, have at the very least failed to live up to their responsibilities.

CONSEQUENTLY, ALL OF THE EVIDENCE MAY BE SUSPECT. WE SHALL RETURN TO THIS MATTER IN DUE COURSE.

IN THE PRESENT CASE COUNSEL FOR THE INTERVENER DID NOT SEEK TO REST HIS CASE ON THE GROUND THAT THE ORGANIZERS WERE RESPONSIBLE UNION OFFICERS OR OFFICIALS, AND WE HAVE NO HESITATION IN FINDING THAT THE COLLECTORS INVOLVED IN THE 17 CARDS WE ARE CONSIDERING ARE NOT IN THAT CATEGORY. WHILE IT IS TRUE THAT SOME OF THE COLLECTORS RECEIVED SOME EXPENSE MONEY AND FURTHER. THAT IN THE CASE OF THE GIRARDS EACH HAD ACTED BEFORE FOR MINE MILL. ONE SOME YEARS AGO AS A PAID ORGANIZER IN A PARTICULAR CAMPAIGN. NEVERTHELESS. DURING THE PRESENT CAMPAIGN, ALL WERE EMPLOYEES OF INCO, HAD NEVER HELD OFFICE IN THE UNION. AND DID NOT RECEIVE MONEY FOR LOST TIME. IN OUR VIEW. THESE COLLECTORS FALL WITHIN THE CATEGORY DESCRIBED BY THE BOARD IN THE WEBSTER AIR EQUIPMENT CASE, SUPRA, AS "PERSONS OF LESSER RANK IN THE UNION ORGANIZATION". HOWEVER, THE INTERVENER DOES ARGUE THAT REGARDLESS OF LACK OF KNOWLEDGE OF OR OF EVIDENCE OF LAXITY ON THE PART OF THE APPLICANT'S OFFICERS AND OFFICIALS. THE APPLICANT MUST ACCEPT RESPONSIBILITY FOR THE CONDUCT OF SUCH PERSONS OF LESSER RANK BECAUSE THEY WERE ACTING. WHETHER PROPERLY OR IMPROPERLY. IN THE COURSE OF WHAT THEY WERE APPROVED OR SELECTED BY MINE MILL TO DO. NAMELY. SIGN UP MEMBERS AND COLLECT DOLLARS. CONSEQUENTLY ALL OF THE MEMBERSHIP EVIDENCE IS SUSPECT. AS MUST NOW BE READILY APPARENT FROM OUR CONSIDERATION OF THE BOARD'S POLICIES ABOVE, THIS ARGUMENT WOULD SEEM TO BE IN CONFLICT WITH THOSE POLICIES AND THE BASIC CONSIDERATION UNDERLYING THEM. THE CORNERSTONE OF THE INTERVENER'S ARGUMENT IS THAT THE VOLUNTARY ORGANIZERS WERE GIVEN, IN EFFECT, SOLE RESPONSIBILITY FOR THE CAMPAIGN. DO THE DECISIONS OF THE BOARD RELIED ON BY STEEL AND REFERRED TO ABOVE ESTABLISH SUCH A GENERAL PROPOSITION?

IN OUR VIEW, THE STATEMENTS MADE IN THE DOMINION STORES LIMITED AND SLOUGH ESTATES (CANADA) LIMITED CASES MUST BE READ IN THE CONTEXT OF THE FACT SITUATIONS TO WHICH THEY RELATE. IN BOTH CASES A "RANK-AND-FILER" OR "PERSON OF LESSER RANK IN THE UNION ORGANIZATION" ACTED AS COLLECTOR FOR ALL THE CARDS SUBMITTED ON BEHALF OF THE UNION. IN THAT SENSE THEY WERE GIVEN FULL RESPONSIBILITY FOR THE CAMPAIGN. BUT IT IS EQUALLY TRUE THAT, IN LINE WITH PRIOR BOARD DECISIONS, IT WAS OPEN TO THE BOARD IN EACH CASE TO CONCLUDE THAT BECAUSE OF THE NATURE OF THE IRREGULARITY WEIGHT SHOULD NOT BE GIVEN TO THE OTHER MEMBERSHIP EVIDENCE WITH WHICH THE PARTICULAR COLLECTOR WAS CONCERNED, WHETHER THE SOLE COLLECTOR OR NOT. SEE THOMAS DELLELCE AND COMPANY LIMITED, SUPRA. FURTHERMORE, IN THE DOMINION STORES CASE THERE WAS AN ADDED FACTOR, THAT IS, THE FAILURE OF THE OFFICIAL SIGNING THE BOARD'S FORM 9 TO MAKE INQUIRIES. THERE IS NO SUGGESTION OF ANY FAILURE TO MAKE INQUIRIES IN THE PRESENT CASE.

IN ANY EVENT, IF THE CASES IN QUESTION DO INTRODUCE THE FACTOR OF TURNING THE RESPONSIBILITY FOR A CAMPAIGN OVER TO RANK-AND-FILERS AS ONE FOR MATERIAL CONSIDERATION, THAT PROPOSITION MUST BE VIEWED, AS WE SAID ABOVE, IN THE FACT CONTEXT OF THE CASES, AND THE SIGNIFICANT FACTOR IN BOTH CASES WOULD APPEAR TO BE THAT ONLY ONE PERSON WAS INVOLVED IN COLLECTING THE MONEY. CERTAINLY WE DO NOT BELIEVE THAT THE BOARD INTENDED IN THOSE CASES THAT SUCH A PRINCIPLE SHOULD APPLY TO EVERY CASE WHERE THE ONLY COLLECTORS WERE RANK-AND-FILERS, AND PARTICULARLY TO ONE SUCH AS THE PRESENT IN WHICH, IN OUR VIEW, THE CIRCUMSTANCES ARE ENTIRELY DIFFERENT. THAT BEING THE CASE, WE DO NOT FIND IT NECESSARY TO DEAL WITH HANKIN AND STRUCK FURNITURE LTD., A CASE DEALING WITH CONTEMPT OF AN INJUNCTION BY AN OFFICER OF A COMPANY, OTHER THAN

TO OBSERVE THAT THE PRINCIPLES THERE SET OUT ARE NOT ONES, AS HAS BEEN SHOWN, THAT THE BOARD HAS GENERALLY APPLIED IN DEALING WITH THE WEIGHT TO BE GIVEN MEMBERSHIP EVIDENCE IN CERTIFICATION CASES. IN THE RESULT, THEREFORE, WE REJECT THE SUBMISSION OF THE INTERVENER, STEEL, THAT THE APPLICANT AUTOMATICALLY ASSUMES RESPONSIBILITY FOR THE ACTS OF THE COLLECTORS IN THE PRESENT CASE BECAUSE IT TURNED OVER THE WHOLE ORGANIZATIONAL CAMPAIGN TO SUCH PERSONS. WE WOULD ADD THAT THE WALTER E. SELCK OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1964, P. 138, A CASE NOT REFERRED TO IN ARGUMENT, OUGHT NOT TO BE REGARDED IN ANY DIFFERENT LIGHT FROM THE DOMINION STORES OR SLOUGH ESTATES CASES.

#### FACTS CONSIDERED IN LIGHT OF BOARD POLICIES

WE TURN NOW TO A CONSIDERATION OF THE FACTS HAVING REGARD TO THE PRINCIPLES ENUNCIATED ABOVE. THESE PRINCIPLES WERE THOSE APPLIED BY THE BOARD IN THE PREVIOUS INCO CASE AND, WITH THE POSSIBLE EXCEPTION OF THE ONE CARD ON WHICH THE DATES WERE CHANGED, THE LANGUAGE OF THE BOARD IN THE EARLIER DECISION IS APPLICABLE HERE. AFTER REFERRING TO THE WEBSTER AIR EQUIPMENT CASE, THE BOARD WENT ON TO SAY:

THERE IS NOTHING IN THE TESTIMONY WE HAVE HEARD WHICH INDICATES IN ANY WAY THAT ANY RESPONSIBLE OFFICER OR OFFICIAL OF THE APPLICANT UNION SUBMITTED A DEFECTIVE CARD OR THAT ANY SUCH CARD WAS SUBMITTED WITH THE KNOWLEDGE OF A RESPONSIBLE OFFICER OR OFFICIAL OF THE APPLICANT UNION. THE EVIDENCE BEFORE US RELATES EXCLUSIVELY TO RANK AND FILE MEMBERS OF THE APPLICANT. NOR IS THERE ANY EVIDENCE THAT ANY UNION OFFICER OR OFFICIAL WAS SO LAX AS TO THE WAY IN WHICH DOCUMENTARY EVIDENCE OF PAYMENT WAS OBTAINED THAT HE MAY REASONABLY BE TAKEN TO HAVE SHUT HIS EYES TO ANY IMPROPRIETY.

ON THE CONTRARY, THE EVIDENCE HERE IS THAT THE APPLICANT TOOK EXTRA PRECAUTIONS TO ENSURE ITSELF THAT IRREGULARITIES WERE BROUGHT TO LIGHT -PRECAUTIONS THAT, SO FAR AS WE ARE AWARE, HAVE NOT BEEN TAKEN IN ANY PREVIOUS CASE. WE REFER OF COURSE TO THE EFFORT OF MINE MILL TO MAKE INQUIRIES FROM EACH PERSON LISTED IN ITS FILES AS A MEMBER. IN OTHER WORDS, THE APPLICANT WENT BEYOND THE COLLECTORS TO THE EMPLOYEES THEMSELVES. WHEN ITS FIRST EFFORTS WERE UNSUCCESSFUL, IT TRIED AGAIN AND WHILE IT MAY NOT IN POINT OF FACT HAVE ACTUALLY CONTACTED EVERY MEMBER, IT CERTAINLY CANNOT BE ACCUSED OF LAXNESS OR OF SHUTTING ITS EYES OR IN THE WORDS OF COUNSEL FOR THE INTERVENER "OF PUTTING THEIR HANDS IN THEIR POCKETS". FURTHERMORE, THE EVIDENCE IS THAT WHERE IRREGULARITIES WERE ALLEGED, THE FACTS WERE INVESTIGATED AND CARDS WITHDRAWN IF THE CIRCUMSTANCES INDICATED THIS WAS THE PROPER COURSE OF ACTION. WE HAVE ALREADY POINTED OUT THAT TWO OF ITS CARDS WERE ALLOWED TO STAND AND WE HAVE FOUND NOTHING WRONG WITH THOSE CARDS. IN ADDITION TO ALL THIS, THERE IS THE FACT OF THE INTERVENER REQUESTING EMPLOYEES TO HAND OVER THE REGISTERED LETTERS SENT OUT BY THE APPLICANT. WHILE THE EVIDENCE DOES NOT IN MOST INSTANCES JUSTIFY THE BOARD IN MAKING ANY FINDINGS AS TO WHETHER IF STEEL HAD ADVISED THE EMPLOYEES TO WRITE MINE MILL, THE LETTERS WOULD HAVE ARRIVED IN TIME TO PERMIT THE APPLICANT TO WITHDRAW THE CARDS, SIMILAR CONDUCT IN A FUTURE CASE MIGHT WELL BE A FACTOR TO BE TAKEN INTO CONSIDERATION BY THE BOARD. WE HASTEN TO ADD THAT THESE REMARKS ARE NOT INTENDED TO APPLY TO UNIONS WHICH DISTRIBUTE THEIR OWN QUESTIONNAIRE IN AN ATTEMPT TO FIND EVIDENCE OF IRREGULARITIES.

THE CARD WHICH WE REFERRED TO ABOVE AS CONSTITUTING A POSSIBLE EXCEPTION TO OUR GENERAL FINDINGS IS THE ONE ON WHICH DATES WERE ADDED OR CHANGED AFTER BEING HANDED IN TO THE MINE MILL OFFICE BY THE COLLECTOR. IN CONSIDERING THE SIGNIFICANCE OF THE CHANGES IT WILL BE RECALLED THAT AFTER A CAREFUL SCRUTINY OF ALL THE CARDS, THE BOARD CAUSED ITS EXAMINERS TO MAKE INQUIRIES CONCERNING SOME 62 CARDS WITH SIMILAR DEFECTS. AS A RESULT OF THE EXAMINERS! REPORTS, THE BOARD FOUND IT NECESSARY TO CONDUCT HEARINGS WITH RESPECT TO ONLY THREE CARDS AND, AFTER HEARING THE EVIDENCE, THE BOARD FOUND ONLY ONE CARD OUT OF THE THOUSANDS FILED THAT MIGHT BE CONSIDERED IRREGULAR. IN ADDITION TO THIS, AS WAS INDICATED EARLIER, IT IS UNLIKELY THAT THERE WAS ANY DELIBERATE ATTEMPT TO MISLEAD THE BOARD, HAVING REGARD TO THE DATE INSERTED AND TO THE FACT THAT THERE WAS NOT ATTEMPT TO CONCEAL THE CHANGE MADE. IN THESE CIRCUMSTANCES AND DESPITE THE ABSENCE OF ANY EXPLANATION, WE ARE NOT PREPARED TO MODIFY OUR GENERAL FINDINGS, ABOVE, RESPECTING THE KNOWLEDGE AND GENERAL CONDUCT OF THE APPLICANT SOFFICERS AND OFFICIALS.

THIS BRINGS US THEN, AS IT DID THE BOARD IN THE EARLIER INCO CASE, TO THE SECOND BRANCH OF THE STATEMENT SET OUT IN THE WEBSTER AIR EQUIPMENT CASE. SUPRA, THAT IS, THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP HAVING REGARD TO THE EXTENT OF THE IRREGULARITIES AND TO THE FACT THAT THE CARDS IN QUESTION WERE PROCURED BY PERSONS OF LESSER RANK IN THE UNION ORGAN-IZATION. AS WE POINTED OUT EARLIER, THE DECISIONS OF THE BOARD DEALING WITH SIMILAR PROBLEMS MUST BE READ IN THE LIGHT OF THEIR PARTICULAR FACT SITUATIONS. WHAT MAY HAVE BEEN REGARDED AS A PATTERN IN ONE CASE WOULD NOT NECESSARILY BE SO IN ANOTHER. THE FACT IS THE PRESENT CASE HAS NO PARALLEL OTHER THAN ITS EARLIER COUNTERPART. COUNSEL FOR THE INTERVENER POINTS TO THE HOWARD SMITH Paper Mills LtD. Case, supra, as a guide. The Board in that case found that THERE WAS ONE FORGED CARD, THREE CASES OF NON-PAY AND THREE CASES OF EMPLOYEES NOT RECEIVING RECEIPTS OUT OF 562 CARDS FILED. THIS WAS HELD TO CONSTITUTE A PATTERN FATAL TO THE APPLICATION. BUT THAT CASE WAS ONE DEALING WITH PAID ORGANIZERS AND AS THE WEBSTER AIR EQUIPMENT CASE STATES, EVEN A SINGLE DEFECTIVE CARD IN SUCH A SITUATION MAY PROVE TO BE FATAL. IN THE RCA VICTOR CASE, SUPRA, THE BOARD IN DEALING WITH LOAMS BY AN EMPLOYEE FOUND THE INCIDENTS NOT "ISOLATED BUT PART OF A MORE GENERAL. ALTHOUGH NOT WIDESPREAD PATTERN..." THERE IS NO INDICATION IN THE DECISION OF THE TOTAL NUMBER OF CARDS FILED BY THE UNION OF THE TOTAL NUMBER IN WHICH THE EMPLOYEE IN QUESTION PARTICIPATED. IN THE RESULT. THE BOARD ORDERED A REPRESENTATION VOTE WHICH, IN ANY CASE, IS ALL THE PRESENT APPLICANT SEEKS OR IS ENTITLED TO. IN THE CANADIAN WESTINGHOUSE COMPANY LIMITED CASE, (1954) C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 149-154, 917,089, C.L.S. 76-461, THE BOARD FOUND THAT FIVE EMPLOYEES MADE LOANS ON SIX SEPARATE OCCASIONS AND THIS OUT OF 81 CARDS FILED, I.E., OVER 7% OF THE CARDS. THIS, COUPLED WITH THE FACT THAT OVER HALF THE CARDS FILED WERE OBTAINED IN THE LAST TWO DAYS OF THE CAMPAIGN WHEN THE UNION S POSITION WAS DESPARATE. WAS HELD TO BE FATAL TO THE INTERVENING UNION'S APPLICATION. THE CASE WITH WHICH WE ARE CONCERNED DIFFERS CONSIDERABLY.

AS WE SAID ABOVE, THE FINDINGS IN THESE AND OTHER CASES THAT WEIGHT SHOULD OR SHOULD NOT BE GIVEN THE REST OF THE MEMBERSHIP EVIDENCE DEPEND ON PARTICULAR FACT SITUATIONS AND THE INFERENCES TO BE DRAWN THEREFROM. HOWEVER, WE DO THINK IT ADVISABLE TO CLEAR UP ONE MATTER. WHEN THE CASES SPEAK OF PATTERN, IT IS NECESSARY TO DISTINGUISH TWO SITUATIONS. PATTERN MAY REFER TO THE EXTENT OF THE OBJECTIONABLE ACTIVITY CARRIED ON BY A SINGLE COLLECTOR. THIS WILL BE A MATERIAL FACTOR IN CONSIDERING WHAT WEIGHT SHOULD BE GIVEN TO

THAT COLLECTOR'S OTHER CARDS AND TO THE CARDS OF OTHERS FOR WHOM HE MAY BE RESPONSIBLE OR WITH WHOM HE MAY BE ASSOCIATED, BUT IT IS NOT NECESSARILY A MATERIAL FACTOR TO BE CONSIDERED IN DETERMINING THE WEIGHT TO BE GIVEN THE REMAINING EVIDENCE OF MEMBERSHIP. PATTERN MAY ALSO REFER TO THE EXTENT OF THE OBJECTIONABLE PRACTICES AMONG A NUMBER OF COLLECTORS AND IN SUCH A CASE IS A MATERIAL FACTOR IN CONSIDERING THE WEIGHT TO BE GIVEN ALL THE EVIDENCE OF MEMBERSHIP FILED IN A CASE.

IN SEEKING TO DETERMINE THE EFFECT OF THE IRREGULARITIES FOUND TO EXIST IN THE PRESENT CASE ON THE REMAINING EVIDENCE OF MEMBERSHIP IT IS PROPER, IN OUR JUDGMENT, TO CONSIDER THE FOLLOWING MATTERS:

- 1. The size of the bargaining unit and the vast number of persons involved in the campaign. (See the earlier inco Case, supra) in this connection, we note that the bargaining unit consists of over 15,000 employees, probably one of the largest in Canada, that evidence of membership was filed for 7,817 persons and that over 830 organizers participated in the campaign which lasted for about a year.
- 2. THE EXTENT OF THE INVESTIGATIONS INTO THE MEMBERSHIP EVIDENCE (SEE THE EARLIER INCO CASE) BY THE INTERVENER, THE BOARD AND THE APPLICANT. IT IS CLEAR THAT THE INTERVENER ATTEMPTED TO ASCERTAIN EVIDENCE OF IRREGULARITIES. To THIS END THEY PREPARED VARIOUS FORMS FOR SIGNATURE BY EMPLOYEES, A NUMBER OF WHICH WERE FILED WITH THE BOARD BY THE INTERVENER IN SUPPORT OF ITS ALLEGATIONS. ONE OF THESE FORMS, REFERRED TO THROUGHOUT THE HEARINGS AS "THE GREEN FORM" ASKED VARIOUS QUESTIONS OF EMPLOYEES AS, FOR EXAMPLE, WHETHER THEY HAD SIGNED A MINE MILL CARD, PAID A DOLLAR, OBTAINED A RECEIPT OR MEMBERSHIP CARD, RECEIVED A REGISTERED LETTER OR HAD REPLIED TO THAT LETTER. ANOTHER FORM USED WAS A YELLOW CARD WHICH ON ONE SIDE CONTAINED THE STATEMENT THAT THE "UNDERSIGNED" HAD SIGNED A MINE MILL CARD BUT HAD NOT PAID ANY MONEY TO MINE MILL AND, ON THE REVERSE SIDE, PROVIDED AN OPPORTUNITY TO THE PERSON SIGNING TO REVOKE HIS MEMBERSHIP IN MINE MILL AND/OR CERTIFY AS TO HIS MEMBERSHIP IN STEEL. WHILE WE HAVE NO DIRECT EVIDENCE INDICATING THE EXTENT OF THE DISTRIBUTION OF THE FORMS, COUNSEL FOR THE INTERVENER TOLD THE BOARD THAT THE INTERVENER HAD ITS OWN LISTS OF PERSONS WHOSE CARDS MIGHT BE SUSPECT AND THAT, IN ADDITION. EMPLOYEES CAME TO THE STEEL OFFICE TO VOLUNTEER INFORMATION. IT IS CLEAR FROM THE EVIDENCE THAT REPRESENTATIVES OF STEEL WERE QUESTIONING EMPLOYEES AT WORK AND WERE MAKING UNSOLICITED VISITS TO THEIR HOMES. AS A RESULT OF ITS INVESTIGATIONS, WHICH CONTINUED AFTER THE HEARINGS COMMENCED, STEEL FILED CHARGES OF NON-PAY ETC. INVOLVING SOME 164 CARDS. IN THE CIRCUMSTANCES, WE MAY FAIRLY ASSUME THAT STEEL, THE INCUMBENT UNION, MADE EVERY EFFORT TO UNCOVER ANYTHING IN THE WAY OF IRREGULARITIES IN THE MEMBERSHIP EVIDENCE SUBMITTED BY MINE MILL. ALTOGETHER APART FROM THE ALLEGATIONS MADE BY STEEL, THE BOARD INVESTIGATED A FURTHER 96 CARDS. THE RESULTS OF THOSE INVESTIGATIONS HAVE BEEN SET OUT EARLIER IN THIS DECISION. FINALLY, WE HAVE THE INVESTIGATIONS, ALREADY DETAILED, UNDERTAKEN BY THE APPLICANT. AS WE SAID ABOVE, THIS REPRESENTED A CONSCIOUS EFFORT OF GREAT MAGNITUDE IN A PARTICULARLY COMPLEX SITUATION TO ASCERTAIN IF IRREGULARITIES HAD OCCURRED AND IF THEY HAD, TO BRING THEM TO THE ATTENTION OF THE BOARD. IT SEEMS CLEAR THAT THIS EFFORT ON THE PART OF MINE MILL REVEALED ONLY A FEW DEFECTIVE CARDS.

3. THE THIRD MATTER TO BE CONSIDERED IS THE NATURE OF THE IRREGULARITIES. THERE ARE 17 CARDS IN QUESTION. ONE OF THESE, THE CARD WITH THE CHANGED DATES. WE HAVE ALREADY CONSIDERED AND FOUND NOT TO INVOLVE ANY ATTEMPT TO MISLEAD THE BOARD. ANOTHER CARD TURNED OUT TO BE A CASE OF NON-SIGN. THIS WAS THE ONLY INSTANCE OF THIS TYPE OF IRREGULARITY FOUND TO EXIST IN ALL OF THE CARDS FILED. FURTHERMORE, WE HAVE FOUND THAT THE COLLECTOR IN QUESTION COULD NOT BE FIXED WITH KNOWLEDGE THAT THE PERSON WHO SIGNED WAS NOT THE PERSON HE PURPORTED TO BE. THE REMAINING 15 CARDS INVOLVE LOANS BY COLLECTORS OR THIRD PARTIES. IN ONE OF THESE THE LOAN BY THE THIRD PARTY WAS NOT KNOWN TO THE COLLECTOR. SOME OF THE LOANS WERE MADE IN THE LAST STAGES OF THE CAMPAIGN. OTHERS OCCURRED EARLIER ON. APART FROM THE GIRARDS. THERE IS NO EVIDENCE TO SHOW OR SUGGEST THAT THE COLLECTORS WERE INVOLVED WITH ONE ANOTHER OR WITH OTHER COLLECTORS IN THEIR PRACTICES OR. WITH ONE EXCEPTION. THAT THEY WERE RESPONSIBLE FOR OTHER PERSONS INVOLVED IN THE CAMPAIGN. MEALEY IS THE ONE EXCEPTION. HE TURNED OVER SOME CARDS TO A PERSON WHO WAS NOT, ON THE EVIDENCE. AN APPROVED COLLECTOR. BUT FOR WHOSE ACTIONS HE MUST OF COURSE ACCEPT RESPONSIBILITY. IN THE CASE OF THE GIRARDS THERE IS NO QUESTION BUT THAT THEY ENGAGED IN PRACTICES WHICH CONSTITUTED A PATTERN AND AN ATTEMPT TO MISLEAD THE BOARD. ON THE OTHER HAND, THERE IS NO EVIDENCE THAT THEY WERE RESPONSIBLE FOR THE ACTIONS OF OTHERS ENGAGED IN THE CAMPAIGN OR THAT THEIR MALPRACTICES WERE CARRIED ON IN CONJUNCTION WITH OTHER COLLECTORS.

THE NET RESULT, THEREFORE, IS THAT WE ARE CONCERNED IN THIS CASE WITH THE ACTIONS OF 11 COLLECTORS, 2 OF WHOM ACTED IN CONCERT, BUT NOT ONE OF WHOM IS SHOWN TO BE LINKED IN ANY WAY WITH ANY OF THE OTHER 800 COLLECTORS IN THE CAMPAIGN. DO THESE INCIDENTS, TAKEN AS A WHOLE, CONSTITUTE A PATTERN SUCH AS TO LEAD US TO THE CONCLUSION THAT DOUBT IS CAST ON ALL THE REMAINING MEMBER—SHIP EVIDENCE? TAKING INTO CONSIDERATION ALL THE FACTORS DISCUSSED ABOVE, WE ARE NOT PREPARED TO FIND THAT DOUBT HAS BEEN CAST ON THE EVIDENCE OF MEMBER—SHIP OBTAINED BY THE OTHER COLLECTORS.

THERE REMAINS FOR CONSIDERATION THE WEIGHT TO BE GIVEN THE EVIDENCE OF MEMBERSHIP OBTAINED BY THE 11 COLLECTORS IN QUESTION. WE HAVE NO HESITAT-ION IN FINDING THAT DOUBT IS CAST ON ALL OF THE CARDS OBTAINED BY THE GIRARDS. THE SAME IS TRUE WITH RESPECT TO SORENSON'S CARDS. SORENSON, IT WILL BE RECALLED. WAS FOUND TO HAVE MADE LOANS IN TWO CASES. HAVING REGARD TO THESE FINDINGS WE HAVE NOT DEEMED IT NECESSARY TO SET OUT THE ORAL REASONS GIVEN AT THE HEARING ON AUGUST 5TH FOR REFUSING. AT THAT TIME, THE REQUEST OF THE INTERVENER THAT THE BOARD INVESTIGATE ALL THE CARDS SUBMITTED BY THE GIRARDS AND SORENSON. THE REQUEST WAS NOT MADE AGAIN. WE ALSO FIND THAT DOUBT HAS BEEN CAST ON THE CARDS OBTAINED BY BEATTLE. THERE WERE NO EXTENUATING CIRCUMSTANCES IN THE CASE OF HIS LOAN TO MUNRO AND HIS ANSWERS IN THE WITNESS BOX ABOUT OTHER LOANS WERE FAR FROM SATISFACTORY. WE FOUND LEVESQUE TO BE A TRUTHFUL WITNESS AND, IN THE CIRCUMSTANCES, WE FIND THAT DOUBT HAS NOT BEEN CAST ON THE OTHER CARDS OBTAINED BY HIM. OF COURSE CARRIERE'S CARD WILL NOT BE COUNTED. IT MAY WELL BE THAT IN THE CASE OF THE REMAINING 6 COLLECTORS, NAMELY CHELLEW, OSJANIKOW, WURSCH, GAVAN, LALONDE AND MEALEY, NO WEIGHT SHOULD BE GIVEN TO ANY OF THE CARDS OBTAINED BY THEM. HOWEVER, IT IS NOT NECESSARY TO REACH ANY FINAL DECISION IN THEIR CASES BECAUSE, EVEN IF ALL THEIR CARDS ARE DISALLOWED. THE TOTAL NUMBER, INCLUDING THOSE OF THE GIRARDS, SORENSON AND BEATTIE, SUBMITTED TO THE BOARD IS JUST UNDER 400. THIS FIGURE INCLUDES 29 WITHDRAWN AND "LOST" CARDS. IF ALL WERE DISALLOWED, THE APPLICANT WOULD STILL HAVE AS MEMBERS OVER 45% OF THE EMPLOYEES IN THE BARGAINING UNIT. MOREOVER, IT IS NOT NECESSARY FOR THE BOARD TO MAKE RULINGS RESPECTING 84 CARDS REFERRED TO UNDER THE HEADING OF "ADDITIONAL INFORMATION" ON THE BOARD'S SECOND COUNT, SUPRA, PP. 18-19, BECAUSE IF FOR PRESENT PURPOSES THESE CARDS, ALONG WITH THOSE OF THE COLLECTORS, WERE ALL DISALLOWED, THE APPLICANT WOULD STILL HAVE APPROXIMATELY 210 CARDS IN EXCESS OF THE NUMBER REQUIRED FOR A REPRESENTATION VOTE.

#### CONCLUSION

TAKING INTO ACCOUNT, THEN, THE EVIDENCE BEFORE US, THE REPRESENTATIONS OF THE PARTIES AND OUR FINDINGS AS DETAILED IN THESE REASONS, THE BOARD IS SATISFIED THAT THE APPLICANT HAS AS MEMBERS OVER 45% OF THE EMPLOYEES IN THE AGREED BARGAINING UNIT. THE RECORD, THEREFORE, WILL BE ENDORSED IN ACCORDANCE WITH THIS FINDING, AND THE ENDORSEMENT WILL INCLUDE A DIRECTION FOR THE TAKING OF A REPRESENTATION VOTE IN WHICH THE VOTERS WILL BE ASKED TO CHOOSE BETWEEN THE APPLICANT, MINE MILL, AND THE INTERVENER, STEEL.

10782-65-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: J. H. Osler, Q.C., M. Federman, L. Weisdorf and A. Hershkovitz for the Applicant, John P. Sanderson, Walter Reid and Jack Cooper for the Respondent, Sheridan McGinty for a group of employees.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER D. McDermott. (JANUARY 31, 1966.)

- 1. "This is an application for certification. Following the Board's decision dated December 3, 1965, wherein the Board determined the appropriate Bargaining unit in this matter, the Registrar Listed this application for continuation of hearing on all outstanding issues including the hearing of evidence relating to the origination, circulation and preparation of the documents filed in opposition to this application and the charges made by the applicant in connection therewith.
- The applicant called several witnesses who testified concerning activities of officials of the respondent during the course of the organizing campaign, whereby it was indicated to the employees that the respondent was not in favour of the employees being represented by the applicant union. The respondent's officials made inquiries of employees as to whether or not they had joined the applicant union. The employees were also advised at a meeting called by the respondent's president to "slam the door in the union's face". The employees were informed that they were not chained to their machines and that if they wanted to be represented by a union they could get out and go to work at a factory where there already was a trade union. In addition, it was indicated to certain employees, by officials of the respondent, that if the applicant union succeeded in its attempt to become the bargaining agent, the company might find it economically necessary to lay off 100 to 125 employees because the company could not meet the competition from Japan.

- 3. It is readily apparent from the overt manner in which Mr. McGinty circulated the petitions for signatures, that he had no fear of interference or objection from the respondent. In view of the activities of the respondent's officials as set out above the manner in which Mr. McGinty circulated the petition would likely lead the employees to believe that his opposition to the application had the support and approval of the respondent.
- 4. IN VIEW OF ALL THE CIRCUMSTANCES WHICH LED TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER."

DECISION OF BOARD MEMBER H. F. IRWIN: (JANUARY 31, 1966.)

| DISSENT.

THERE WAS NO EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER WHICH SHOWS THAT MR. SHERIDAN MCGINTY, THE REPRESENTATIVE OF THE GROUP OF EMPLOYEES WHO OPPOSED THE APPLICATION, HAD ANY ASSISTANCE OR DIRECTION FROM THE RESPONDENT IN THE ORIGINATION AND PREPARATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION OR THAT ANY MEMBER OF MANAGEMENT PARTICIPATED IN THE CIRCULATION OF THESE DOCUMENTS.

I WOULD, THEREFORE, FIND THAT THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO NECESSITATE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

10905-65-R: United Steelworkers of America (Applicant) v. National Steel Car Corporation Limited (Respondent).

BEFORE: J. D. O'Shea, Deputy Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND GERALD GRIFFIN FOR THE APPLICANT, E. L. STRINGER AND T. F. RAHILLY FOR THE RESPONDENT.

DECISION OF THE BOARD: (JANUARY 26, 1966.)

- 1. This is an application for certification wherein the applicant requested that a pre-hearing representation vote be taken.
- 2. PRIOR TO THE BOARD'S DECISION DATED OCTOBER 19TH, 1965, WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN, THE RESPONDENT'S SOLICITOR FORWARDED TO THE BOARD AFFIDAVITS SIGNED BY 2 EMPLOYEES WHEREIN THEY STATE THAT THEY PAID NO MONEY TO THE APPLICANT ON ACCOUNT OF INITIATION FEES, EITHER BEFORE OR AFTER THE TIME WHEN THEY SIGNED THEIR MEMBERSHIP CARDS.

- 3. IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN SIMILAR CASES, THE BOARD DIRECTED THAT THE PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED PENDING A FURTHER DIRECTION OF THE BOARD.
- FOLLOWING THE BOARD'S INITIAL INQUIRY THROUGH ITS OFFICERS INTO THE NON-PAY ALLEGATIONS AND ALSO INTO CERTAIN DISCREPANCIES WHICH APPEAR IN SIGNATURES ON CARDS SUBMITTED BY THE APPLICANT, THE BOARD DIRECTED THE REGISTRAR TO LIST THE MATTER FOR HEARING TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE SIGNING OF APPLICATION FOR MEMBERSHIP CARDS OF ANTONIO GONCALVES, BILL GREEN AND ROLAND SIMARD, AND FURTHER TO INQUIRE INTO WHETHER OR NOT THE AFOREMENTIONED PERSONS ACTUALLY SIGNED THE APPLICATIONS FOR MEMBERSHIP CARDS ON THEIR OWN BEHALFS AND ALSO INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEES RELATING TO THE APPLICATION FOR MEMBERSHIP WERE ALLEGED TO HAVE BEEN PAID BY ROGER CHAMPIGNY AND DONALD MARCHAND AND MORE PARTICULARLY INTO THE ALLEGATIONS THAT NEITHER ROGER CHAMPIGNY NOR DONALD MARCHAND PAID ANY MONEY ON THEIR OWN BEHALFS.
- AT THE HEARING, THE PARTIES AGREED THAT CARDS SUBMITTED BY THE APPLICANT ON BEHALF OF ANTONIO GONCALVES AND ROLAND SIMARD WERE NOT SUBMITTED FOR THE 2 EMPLOYEES BY THOSE NAMES EMPLOYED BY THE RESPONDENT ON THE DATE THE APPLICATION WAS MADE, BUT WERE IN FACT SUBMITTED ON BEHALF OF 2 FORMER EMPLOYEES WITH THE SAME NAMES WHO WERE NO LONGER EMPLOYED BY THE RESPONDENT. THIS, OF COURSE EXPLAINS THE DISCREPANCIES IN THE SIGNATURES ON THE CARDS SUBMITTED ON BEHALF OF MR. GONCALVES AND MR. SIMARD.
- 6. During the course of the Board's inquiry into the allegations of "non-sign" by Mr. Green and "non-pay" by Mr. Champigny and Mr. Marchand, inquiries were made concerning the manner in which the Declaration Concerning Membership Documents (Form 9) was completed and the nature of the inquiries made concerning collectors.
- The applicant's campaign to organize the employees of the respondent was directed by Mr. Gerald Griffin, a staff representative of the applicant, under the general supervision of Mr. S. Cooke, the area representative of the applicant. In addition to Mr. Griffin, four other staff representatives of the applicant were actively engaged in the campaign. The applicant also had the assistance of several volunteer organizers who were not paid officials of the applicant. All the cards that were signed in the campaign were turned in to Mr. Griffin or his secretary and Mr. Griffin retained custody of the cards until it was time to make the application. Immediately prior to the application being made, Mr. Griffin assembled and counted the cards and handed them over to Mr. Cooke who in turn forwarded the cards to the Board.
- 8. WHILE MR. COOKE WAS NOT CALLED TO TESTIFY, IT WOULD APPEAR FROM THE EVIDENCE OF OTHER WITNESSES THAT, APART FROM ISSUING INSTRUCTIONS AT THE OUTSET OF THE CAMPAIGN AND KEEPING RACK OF THE PROGRESS OF THE CAMPAIGN, MR. COOKE WAS NOT ACTIVELY ENGAGED IN THE SIGNING UP OF MEMBERS OR IN DEALING DIRECTLY WITH THE COLLECTORS WHO WERE SO ENGAGED. HOWEVER, MR. COOKE HAD ASSUMED THE RESPONSIBILITY OF FORWARDING THE MEMBERSHIP DOCUMENTS TO THE BOARD.

- 9. MR. GRIFFIN TESTIFIED AS TO THE MANNER IN WHICH HE CONDUCTED THE CAMPAIGN. MR. GRIFFIN STATED THAT PRIOR TO HANDING OUT MEMBERSHIP DOCUMENTS TO PERSONS WHO HAD AGREED TO ACT AS COLLECTORS, HE GAVE DETAILED INSTRUCTIONS AS TO THE MANNER IN WHICH THE CARDS WERE TO BE COMPLETED AND THE NECESSITY FOR COLLECTING MONEY ON ACCOUNT OF THE INITIATION FEE FROM EACH PERSON WHO SIGNED. HOWEVER, IT IS CLEAR FROM THE EVIDENCE OF MR. GRIFFIN AND THE OTHER WITNESSES WHO ACTED AS COLLECTORS FOR THE APPLICANT, THAT MR. GRIFFIN DID NOT MAKE ANY INQUIRIES OF THE COLLECTORS IN ORDER TO ASCERTAIN WHETHER THE PERSONS WHO HAD SIGNED CARDS AND RECEIPTS AS COLLECTORS HAD ACTUALLY COLLECTED THE MONIES PAID, AND THAT EACH MEMBER ON WHOSE BEHALF A RECEIPT OR ACKNOWLEDGEMENT OF PAYMENT WAS SUBMITTED HAD PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGEMENT OF PAYMENT AS COLLECTOR IN ACCORDANCE WITH THE REQUIREMENTS OF FORM 9. IN ADDITION, MR. GRIFFIN TESTIFIED THAT WHEN HE TURNED THE CARDS OVER TO MR. COOKE SUCH INQUIRIES WERE NOT MADE OF HIM BY MR. COOKE.
- 10. Mr. Griffin further testified that it would not occur to him to make such inquiries of other staff representatives of the applicant who assisted on the campaign because they had as much, it not more, experience as he himself had and they were aware of the requirements of collecting the money from each person who signed.
- 11. MR. D. M. Storey, THE LEGISLATIVE DIRECTOR OF THE APPLICANT, TESTIFIED THAT HE HAD COMPLETED FORM 9 AND PRIOR TO ITS COMPLETION HE HAD TELEPHONED MR. COOKE AND MADE INQUIRIES OF HIM AND RECEIVED ASSURANCES FROM HIM CONCERNING THE COLLECTORS.
- 12. ITEM 3 OF FORM 9 READS AS FOLLOWS:
  - "3. (WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS
    OR OTHER ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES
    OR INITIATION FEES)

\*PERSONAL KNOWLEDGE, CONCERNING THE COLLECTORS AND, \*MADE INQUIRIES

\*KNOWLEDGE \*INQUIRIES I STATE THAT THE

PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER

ACKNOWLEDGEMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR

INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED

THE MONIES PAID ON ACCOUNT OF DUES OR INITIATION FEES

AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN

ACKNOWLEDGEMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY

PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN

BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT

OR ACKNOWLEDGEMENT OF PAYMENT AS COLLECTOR, EXCEPT IN

THE FOLLOWING INSTANCES:

\*STRIKE OUT PHRASE NOT APPLICABLE."

- 13. It is readily apparent that a person completing Form 9 must be seized with some type of knowledge in order to satisfy the requirements of Item 3 cited above. This knowledge may be personal knowledge (i.e.) knowledge gained by either acting as the actual collector or knowledge gained by being personally present and actually witnessing the transaction between the collector and the member wherein the membership card was signed and payment of money made by the member to the collector.
- 14. The other type of knowledge which is acceptable is that knowledge gained from inquiries made of the persons who actually acted as collectors, or the persons who made the necessary inquiries of the actual collectors.
- 15. THE REQUIREMENT THAT INQUIRIES BE MADE IS OBVIOUSLY NOT AN ONEROUS ONE OR ONE THAT IMPOSES AN UNDUE BURDEN ON THE APPLICANT; HOWEVER, THE REQUIREMENT IS THAT INQUIRIES BE MADE.
- 16. IN ORDER THAT INQUIRIES BE MEANINGFUL IT IS OBVIOUS THAT THEY MUST BE MADE AFTER THE EVENT. INSTRUCTIONS GIVEN TO COLLECTORS PRIOR TO THE SIGNING OF MEMBERS MAY BE HELPFUL OR NECESSARY IN THE CARRYING OUT OF AN ORGANIZING CAMPAIGN, HOWEVER, SUCH INSTRUCTIONS DO NOT OBVIATE THE NECESSITY OF MAKING THE INQUIRIES REQUIRED FOR THE PROPER COMPLETION OF FORM 9. (SEE DOMINION STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, p. 447).
- 17. In the instant case, Mr. Storey, prior to completing Form 9 made inquiries of Mr. Cooke. However, Mr. Cooke had made no inquiries of Mr. Griffin and in turn Mr. Griffin had made no inquiries of other persons who had acted as collectors. It is readily apparent that the inquiries made by Mr. Storey were made of a person who had no direct knowledge of the collectors and the failure of Mr. Cooke and Mr. Griffin to make inquiries frustrated the purpose of Mr. Storey's inquiries. Where the officers of an applicant trade union have themselves frustrated the inquiries made by the person who completes form 9 and by their failure to follow through with their own inquiries, render the inquiries made by such person meaningless, we must find that form 9 in such circumstances can not serve the purpose for which it was intended and in such circumstances is a nullity. In arriving at this conclusion, the Board has noted with approval the Valley Transportation Company Limited Case, O.L.R.B. Monthly Report, June, 1964, p. 140, wherein the Board said:

"THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM."

18. The evidence in the instant case discloses that the officers of the applicant, who were directly responsible for this campaign and who were very aware of the Board's requirements, did not take the necessary steps to ensure that the information contained in Form 9 is true and accurate. The standard of care, integrity, disclosure and accuracy demanded by the Board has not been met in these circumstances.

- 19. SINCE THE DOCUMENTS TENDERED AS EVIDENCE OF MEMBERSHIP ARE NOT SUPPORTED BY A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS BECAUSE OF THE FAILURE OF THE APPLICANT'S OFFICIALS TO MAKE THE NECESSARY INQUIRIES, AND SINCE THE ABSENCE OF A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THE BOARD IS CONSTRAINED TO FIND THAT THE MEMBERSHIP DOCUMENTS CAN NOT BE ACCEPTED AS CONTAINING RELIABLE INFORMATION WHICH COULD MEET EVEN THE MINIMUM STANDARDS OF PROOF REQUIRED BY THE BOARD. (SEE ESSEX WIRE CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1965, p. 490). THIS APPLICATION MUST ACCORDINGLY FAIL.
- 20. While the decision is critical of the Lack of care exhibited by some of the applicant's officials, the Board However, is of opinion that when Mr. Storey made the declaration in Form 9, he was not aware of the failure on the part of the other officials and therefore acted in good faith and is not guilty of a conscious attempt to mislead the Board.
- 21. IN VIEW OF THE RESULT IT WILL NOT BE NECESSARY FOR THE BOARD TO DETERMINE THE OTHER ISSUES IN THIS MATTER.
- 22. This Application is therefore dismissed.
- 10961-65-R: INTERNATIONAL PRINTING PRESSMEN'S AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) v. NORTHERN PRINTING COMPANY (RESPONDENT).

BEFORE: J. H. Brown, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. F. Breen for the applicant, C. A. Morley and L. S. Farrow for the respondent.

DECISION OF THE BOARD: (NOVEMBER 3, 1965.)

- 1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION  $\mathbf{l}(\mathbf{l})(\mathbf{j})$  of The Labour Relations Act.
- 2. The Timmins Typographical Union No. 884 was certified by the Board on February 4th, 1960 as bargaining agent for the same unit of employees which the applicant is seeking in the instant application. The evidence before us is that no collective agreement was subsequently entered into by the Timmins Typographical Union No. 884 and the respondent and further, that there has been no communication between the parties since 1961. In these circumstances, the Board finds that the Timmins Typographical Union No. 884 has abandoned its bargaining rights. Accordingly, this application is properly before the Board.
- 3. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TIMMINS, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS EMPLOYED IN THE PRESSROOM FOR WHOM THE APPLICANT IS THE BARGAINING AGENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE RESPONDENT FILED A LIST CONTAINING THE NAMES OF NINE PERSONS, SIX OF WHOM ARE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3. IN SUPPORT OF ITS APPLICATION, THE APPLICANT SUBMITTED AS EVIDENCE OF MEMBERSHIP FOUR RECEIPTS ALL OF WHICH ARE FOR PERSONS WHO ARE INCLUDED IN THE BARGAINING UNIT. THREEE OF THE RECEIPTS INDICATE THE PAYMENT OF A ONE DOLLAR MEMBERSHIP FEE. THE FOURTH RECEIPT DOES NOT INDICATE ANY MONEY PAYMENT. NONE OF THE RECEIPTS ARE COUNTERSIGNED BY THE PERSONS WHOSE SIGNATURES APPEAR ON THE CORRESPONDING APPLICATION CARDS. WHILE WE ARE PREPARED TO ACCEPT THE MEMBERSHIP EVIDENCE FOR THE THREE PERSONS FOR WHOM RECEIPTS INDICATE THE PAYMENT OF ONE DOLLAR, WE FIND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR THE FOURTH PERSON, WHICH SHOWS NO INDICATION OF ANY MONEY PAYMENT ON EITHER THE APPLICATION CARD OR THE RECEIPT, HAS FAILED TO MEET THE BOARD SMEMBERSHIP REQUIREMENTS. THE BOARD THEREFORE FINDS THAT THE EVIDENCE OF MEMBERSHIP IS SUFFICIENTLY WEAKENED SO AS TO DISENTITLE THE APPLICANT TO CERTIFICATION WITHOUT A REPRESENTATION VOTE.

10981-65-R: NURSES' ASSOCIATION OF RIVERVIEW HOSPITAL (APPLICANT) V. RIVERVIEW HEALTH ASSOCIATION (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. F. O. HERSEY, L. B. SHARPE, MRS. VERNA BLANK, MRS. EMILY JONES AND MISS ANNE GRIBBEN FOR THE APPLICANT, AND JOHN W. WHITESIDE, Q.C., WILLIAM GRIESINGER AND JAMES S. LOCKIE FOR THE RESPONDENT.

DECISION OF THE BOARD: (JANUARY 21, 1966.)

- 1. The Board finds that the applicant is a trade union within the meaning of section 1 (1)(j) of The Labour Relations Act.
- 2. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT THE RIVERVIEW HOSPITAL, WINDSOR, SAVE AND EXCEPT ASSISTANT NURSING SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF ASSISTANT NURSING SUPERINTENDENT CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 3. For the purposes of clarity, the Board declares that the night supervisor, the relief night supervisor, the afternoon supervisor and the relief afternoon supervisor exercise managerial functions and are not included in the unit defined in paragraph 2, but that day supervisors do not exercise managerial functions and are included in the bargaining unit defined in paragraph 2.
- 4. THE BOARD NOTES THE ADMISSION OF THE RESPONDENT THAT PERSONS CLASSIFIED BY IT AS HEAD NURSES AND ASSISTANT HEAD NURSES NO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

- We wish to make it clear that our decision as to the composition of the bargaining unit and as to the status of the several supervisors in this case is based on the evidence presented in this case. Our decision is not to be taken as an indication that, in future cases, nurses classified as supervisors, head nurses or assistant head nurses are, by reason of their titles, to be automatically included in or excluded from a bargaining unit. Persons carrying the same titles in different hospitals may well have different duties and responsibilities and each case will have to be determined on its own peculiar facts.
- 6. ONE OF THE DIFFICULTIES THAT THE BOARD HAS ENCOUNTERED IN COMING TO A CONCLUSION IN THIS MATTER ON THE STATUS OF THE SUPERVISORS WAS THAT THE AUTHORITY OF THE SUPERVISORS OVER THE OTHER EMPLOYEES WAS NEVER EXPRESSLY SPELLED OUT EITHER IN ANY WRITTEN DOCUMENT OR IN ANY FORMAL ORAL COMMUNICATION EITHER TO THE SUPERVISORS OR TO THE OTHER EMPLOYEES. THE EVIDENCE BEFORE US INDICATES THAT SUCH INFORMATION AS WAS GIVEN TO THE SUPERVISORS CONCERNING THE EXTENT OF THEIR AUTHORITY WAS CONVEYED TO THEM IN GENERAL DISCUSSIONS WITH THE DIRECTOR OF NURSING OVER A PERIOD OF TIME. WHERE THE BOARD IS CALLED UPON TO REACH A CONCLUSION AS TO THE STATUS OF PERSONS WHOM THE EMPLOYER CLASSIFIES AS MANAGERIAL (IN CASES IN WHICH THE TEST OF MANAGERIAL FUNCTIONS TURNS ON SUPERVISION) AND THOSE SUBJECT TO THEIR CONTROL, FAILURE OF THE EMPLOYER TO FORMALIZE THE RELATIONSHIP BETWEEN THESE PERSONS IS A FACTOR THAT MAY WEIGH HEAVILY AGAINST THE EMPLOYER'S CLAIM.
- 7. THE BOARD IS SATISFIED, ON THE BASIS OF ALL THE EVIDENCE BEFORE IT, THAT MORE THAN FIFTY-FIVE PERCENT OF THE EMPLOYEES IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.
- 8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11126-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT) AND SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE A.F.L.-C.I.O., C.L.C.) (INTERVENER #1) AND INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND J. TRESSIDER FOR THE APPLICANT, W. S. COOK AND W. G. HARRISON FOR THE RESPONDENT, W. H. CHAPPELL FOR SHOPMEN'S LOCAL UNION #734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AND D. W. FORGIE FOR INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506.

DECISION OF THE BOARD: (JANUARY 3, 1966.)

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "FRANKEL STRUCTURAL STEEL LIMITED".
- 2. THE REPRESENTATIVE OF INTERVENER No. 2, THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 506, WITHDREW FROM THE

PROCEEDINGS AFTER RECEIVING NOTICE OF THE APPLICANT S PROPOSED AMENDMENT TO THE BARGAINING UNIT.

- 3. The Board finds that the applicant is a trade union within the meaning of section  $l(1)(\mathsf{J})$  of The Labour Relations Act.
- 4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
- IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT SEEKS A BARGAINING UNIT, AS AMENDED, CONSISTING OF "IRONWORKERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN LINING UP, SETTING, PLUMBING AND LEVELLING, THE ERECTION OF STRUCTURAL MEMBERS, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THAT RANK AND EMPLOYEES COVERED BY EXISTING COLLECTIVE AGREEMENTS WITHIN THE GEOGRAPHICAL AREA EIGHT AS DEFINED BY THE ONTARIO LABOUR RELATIONS BOARD". IT IS AGREED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE THREE INSTRUMENT MEN WHOSE FUNCTIONS ARE ADEQUATELY DESCRIBED BY THE WORDING IN THE DESCRIPTION OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT. THE EMPLOYEES IN QUESTION ARE EMPLOYED FULL TIME IN THEIR CAPACITIES AS INSTRUMENT MEN AND ARE PAID A SALARY ON A WEEKLY BASIS. THEY DO NOT HANDLE STEEL EXCEPT IN RARE INSTANCES ON SMALL JOBS WHEN THEY MAY GIVE THE IRONWORKERS A HAND. ON A LARGE JOB THEY GIVE DIRECTIONS TO A PLUMBING FOREMAN WHO IN TURN WILL DIRECT THE IRONWORKERS. ON A SMALLER JOB THEY MAY GIVE DIRECTIONS DIRECTLY TO THE IRON-WORKERS. THE INSTRUMENT MEN MAY THEMSELVES BE ASSISTED BY IRONWORKERS IN THE PERFORMANCE OF THEIR PARTICULAR DUTIES. WHILE MOST OF THEIR WORK IS DONE FROM GROUND LEVEL, THEY ARE REQUIRED TO GO UP INTO THE BUILDING TO TAKE ELEVATIONS. .

THE RESPONDENT TAKES THE POSITION THAT THE THREE PERSONS IN QUESTION ARE NOT IRONWORKERS, WHEREAS THE APPLICANT SUBMITS THAT THEIR FUNCTIONS ARE THOSE PERFORMED BY IRONWORKERS.

THE RESPONDENT IS A PARTY TO A COLLECTIVE AGREEMENT BETWEEN THE PRESENT APPLICANT TRADE UNION, NAMELY, LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, TWO OTHER LOCALS OF THE SAME INTERNATIONAL, AND THE STRUCTURAL STEEL ERECTION CONTRACTORS ASSOCIATION OF ONTARIO, WHICH AGREEMENT IS IN EFFECT UNTIL APRIL 30, 1967. THIS AGREEMENT COVERS:

ALL THE EMPLOYEES OF THE EMPLOYER THAT WORK ON FIELD FABRICATING, INSTALLING, ERECTING, RIGGING, WELDING, REPAIRING AND DISMANTILING OF STRUCTURAL STEEL AND OTHER WORK NORMALLY PERFORMED BY IRON WORKERS, OR OF SUCH WORK UNDERTAKEN BY THE EMPLOYER WITHIN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF WORKING FOREMAN, (PUSHER).

THE CLASSIFICATIONS REFERRED TO IN THIS AGREEMENT APPEAR TO BE TWO IN NUMBER, NAMELY, JOURNEYMEN STRUCTURAL IRONWORKERS AND WORKING FOREMEN OR PUSHERS.

IT IS CLEAR THAT THE PRESENT APPLICANT TRADE UNION AND THE PRESENT RESPONDENT COMPANY HAVE NOT BARGAINED FOR THE INSTRUMENT MEN AND HAVE NOT TREATED THEM AS COMING WITHIN THE TERMS OF THE COLLECTIVE AGREEMENT. ON THE OTHER HAND, IT IS CLAIMED THAT THE APPLICANT DOES BARGAIN ON BEHALF OF PERSONS WHO PERFORM SIMILAR FUNCTIONS TO THOSE PERFORMED BY THE INSTRUMENT MEN INVOLVED

IN THIS APPLICATION. THE EVIDENCE IS THAT ONE OTHER COMPANY, NAMELY, DOMINION BRIDGE COMPANY LIMITED, A PARTY TO THE SAME COLLECTIVE AGREEMENT AS THE PRESENT APPLICANT AND RESPONDENT, EMPLOYS TWO INSTRUMENT MEN ON A FULL-TIME BASIS AND THE APPLICANT AND THE SAID DOMINION BRIDGE COMPANY LIMITED TREAT THESE TWO PERSONS AS BEING COVERED BY THE COLLECTIVE AGREEMENT. UNDER THE COLLECTIVE AGREEMENT THESE INSTRUMENT MEN ARE TREATED. ACCORDING TO THE EVIDENCE BEFORE US, AS THE EQUIVALENT OF WORKING FOREMEN OR PUSHERS OR, AT LEAST, ARE PAID THE SAME RATE. THE EVIDENCE ALSO IS THAT IN THE CASE OF THREE OTHER COMPANIES, NAMELY, YORK STEEL CONSTRUCTION LIMITED, NIAGARA STRUCTURAL STEEL LIMITED AND JOHN T. HEPBURN LIMITED, THE PUSHERS OR WORKING FOREMEN DO INSTRUMENT WORK IN ADDITION TO PERFORMING THEIR REGULAR DUTIES. THESE COMPANIES ARE ALL BOUND BY THE SAME COLLECTIVE AGREEMENT REFERRED TO ABOVE WITH THE APPLICANT AND THE APPLICANT BARGAINS ON BEHALF OF THE PUSHERS OR WORKING FOREMEN. COUNSEL FOR THE RESPONDENT MADE A GENERAL STATEMENT, NOT CHALLENGED BY THE APPLICANT, TO THE EFFECT THAT INQUIRIES HAD REVEALED THAT IN THE STRUCTURAL STEEL BUSINESS ABOUT FIFTY PER CENT OF THE EMPLOYERS USED WORKING FOREMEN OR PUSHERS TO DO THE INSTRUMENT WORK WHILE THE OTHER FIFTY PER CENT HIRED INSTRUMENT MEN ON A SALARY BASIS TO DO THE WORK AND. FURTHER, THAT THESE LATTER PERSONS WERE EMPLOYED SOLELY IN THEIR CAPACITY AS INSTRUMENT MEN AND NEVER HANDLED THE STEEL.

- 6. THE EVIDENCE RESPECTING THE STATUS OF PUSHERS OR WORKING FOREMEN AND INSTRUMENT MEN EMPLOYED BY EMPLOYERS OTHER THAN THE RESPONDENT WAS GIVEN BY A REPRESENTATIVE OF THE APPLICANT. THESE EMPLOYERS WERE NOT PARTIES TO THIS PROCEEDING. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE POSITION TAKEN BY THE APPLICANT AND RESPONDENT THAT THE INSTRUMENT MEN AFFECTED BY THIS APPLICATION HAVE NOT BEEN BARGAINED FOR UNDER THE COLLECTIVE AGREEMENT, WE ARE NOT PREPARED TO FIND IN THIS CASE THAT THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND RESPONDENT IS A BAR TO THE PRESENT APPLICATION.
- THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS BASED ON THE PREMISE. INTER ALIA, THAT THE INSTRUMENT MEN PERFORM THE FUNCTIONS OF IRONWORKERS AND OUGHT THEREFORE TO BE CLASSIFIED AS IRONWORKERS OR AS PERSONS DOING THE WORK OF IRONWORKERS. THE EVIDENCE BEFORE US ON THIS QUESTION IS SOMEWHAT SKETCHY. Thus, for example, we have no first hand evidence as to the duties and RESPONSIBILITIES OF PUSHERS OR WORKING FOREMEN WHO, WE ARE TOLD, DO SOME INSTRUMENT WORK. AGAIN, THERE IS NO REAL EVIDENCE BEFORE US ON WHICH WE COULD REACH A CONCLUSION AS TO WHETHER, AS ARGUED BY THE APPLICANT, THE WORK PERFORMED BY THE INSTRUMENT MEN IS IN FACT A "SPLINTERING OFF" OF WORK NORMALLY PERFORMED BY PUSHERS OR WORKING FOREMEN. IN OTHER WORDS, WHILE THERE IS EVIDENCE THAT SOME COMPANIES CURRENTLY EMPLOY PUSHERS OR WORKING FOREMEN TO DO THIS WORK, THERE IS NO EVIDENCE TO INDICATE WHETHER THEY TOOK IT OVER FROM INSTRUMENT MEN OR WHETHER, TRADITIONALLY, THEY DID THE WORK OF LINING UP ETC. AND SUBSEQUENTLY, IN SOME CASES, HAVE BEEN REPLACED BY FULL TIME INSTRUMENT MEN. IN ADDITION TO ALL OF THIS, THERE IS THE COMPLICATING FACTOR OF WHAT. ON THE SURFACE, APPEAR TO BE DIFFERENT INTERPRETATIONS PLACED ON THE COLLECTIVE AGREEMENT BY THE APPLICANT AND CERTAIN MEMBERS OF THE STRUCTURAL STEEL ERECTION CONTRACTORS ASSOCIATION OF ONTARIO. HAVING REGARD TO THESE CONSIDERATIONS AND TO OUR CONCLUSION (SET OUT INFRA) THAT THERE IS AN ALTERNATIVE METHOD OF DEALING WITH THE MATTER, WE REFRAIN, IN THIS CASE, FROM MAKING ANY DETERMINAT-ION ON THE QUESTION RAISED BY THE APPLICANT.

- 8. The question of determining the bargaining unit under section 6(1) rather than under section 6(2) of the Labour Relations act (as proposed by the applicant) was raised by the Board at the hearing. Counsel for the respondent informed the Board that no other members of the respondent's staff have a community of interest with their three instrument men. Taking this into consideration together with the general practice in the construction industry of organizing along craft lines rather than on an industrial basis, that is, in small units rather than on an all employee basis, we find, in the particular circumstances of this case, that under the provisions of section 6(1) of the Labour Relations act the three instrument men would constitute a unit of employees of the respondent appropriate for collective bargaining.
- The Board, therefore, finds further that employees in the employ of the respondent engaged in lining-up, setting, plumbing and levelling in connection with the erection of structural steel within a twenty-five mile radius from the Toronto City Hall, and including the Town of Newmarket, and an area bounded on the east by the westerly limits of the third concession road, running north and south, east of Yonge Street; on the north by the southerly limits of the first concession road, running east and west, north of Newmarket; on the west by the easterly limits of the first concession road, running north and south, west of Yonge Street, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

IN VIEW OF THE BOARD'S FINDING RESPECTING THE CURRENT COLLECTIVE, AGREEMENT BINDING ON THE APPLICANT AND THE RESPONDENT, THE BOARD HAS NOT DEEMED IT NECESSARY TO EXCLUDE FROM THE BARGAINING UNIT PERSONS COVERED BY THAT COLLECTIVE AGREEMENT.

- 10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11234-65-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. WEYERHAEUSER CANADA LIMITED (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. Osler, Q.C., and J. C. Horan for the applicant, and N. L. Mathews, Q.C., for the respondent.

DECISION OF THE BOARD: (JANUARY 18, 1966.)

This is an application for certification. The applicant is at present party to a collective agreement between itself and the respondent, in which the applicant is recognized as bargaining agent for "all employees" of the respondent "save and except office staff, foremen, lumber graders, log scalers and log graders and those above the rank of foremen, and watchmen".

- THE PERSONS WITH RESPECT TO WHOM CERTIFICATION IS NOW SOUGHT ARE TRUCK DRIVERS. THE COLLECTIVE AGREEMENT CONTAINS NO PROVISIONS EXPRESSLY RELATING TO THIS GROUP SINCE THERE HAVE PREVIOUSLY BEEN NO TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN ITS OPERATIONS AT SUALT STE. MARIE. THE COMPANY HAS RECENTLY TRANSFERRED THIS GROUP OF EMPLOYEES TO SAULT STE. MARIE. IT IS CLEAR, HOWEVER, THAT THE PERSONS WITH RESPECT TO WHOM CERTIFICATION IS NOW SOUGHT COME WITHIN THE SCOPE OF THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT NOW IN EFFECT BETWEEN THE APPLICANT AND THE RESPONDENT.
- 3. In view of the foregoing, the Board finds that there is a subsisting bargaining relationship between the applicant and the respondent for the employees for whom the applicant now seeks to be certified as bargaining agent. For the reasons given in the Loblaw Groceterias Case, (1944) D.L.S. 7-1115, and in the Northern Electric Case, (1963) 63 C.L.L.C 1192, the Board finds that no purpose would be served by processing this application further.
- 4. THE APPLICATION IS THEREFORE DISMISSED.

11235-65-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, OTTAWA LOCAL No. 5 (APPLICANT) v. SYNDICAT D'OEUVRES SOCIALES, LIMITÉE (RESPONDENT) v. SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE, REGION OTTAWA-HULL (INTERVENER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: J. P. Nelligan, G. Rollow and P. Churchill for the applicant, Jean-Robert Bélanger for the respondent, and Pierre Genest and J. A. Morin for the Intervener.

DECISION OF: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (JANUARY 25, 1966.)

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "SYNDICAT D'OEUVRES SOCIALES, LIMITÉE".
- 2. This is an application for certification. The applicant applies, pursuant to the provisions of section 6(2) of The Labour Relations Act, for a bargaining unit consisting of web newspaper pressmen and web offset pressmen.
- 3. By the provisions of section 6 subsection 2 of the Act, where an application is made with respect to a group of employees who exercise technical skills or are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that, according to established trade union practice, pertains to such skills or craft, the Board shall deem such a group of employees to constitute a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft. The concluding words of subsection 2, however, contain the proviso that the Board shall not be required to apply subsection 2 where a group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.
- 4. THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION ARE IN FACT REPRESENTED BY THE INTERVENER, AND HAVE BEEN REPRESENTED BY IT FOR MORE THAN

THIRTY YEARS. THESE EMPLOYEES ARE AT PRESENT WITHIN ONE OF TWO BARGAINING UNITS REPRESENTED BY THE INTERVENER, AND EACH OF THEM IS COVERED BY ONE OF TWO COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERVENER, ONE AFFECTING EMPLOYEES IN THE NEWSPAPER DEPARTMENT OF THE RESPONDENT, AND ONE AFFECTING EMPLOYEES IN THE COMMERCIAL PRINTING DEPARTMENT. THE BARGAINING UNITS CONSIST OF "ALL EMPLOYEES" IN THE NEWSPAPER DEPARTMENT AND "ALL EMPLOYEES" IN THE COMMERCIAL PRINTING DEPARTMENT, WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. THE INTERVENER HAS NEGOTIATED WITH RESPECT TO THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION, AND SUCH EMPLOYEES HAVE BEEN REPRESENTED ON THE BARGAINING COMMITTEE. THEY HAVE FROM TIME TO TIME AVAILED THEMSELVES OF THE GRIEVANCE PROCEDURE, AND THE INTERVENER HAS ACTED SUCCESSFULLY ON THEIR BEHALF.

- The applicant Led evidence to the effect that the rates of wages paid the employees affected by this application are not as high as the wages received by persons performing similar work on the staffs of other newspapers in Ottawa. The intervener urged that the other Ottawa newspapers, having a substantially higher circulation than "Le Droit", the newspaper produced by the respondent, did not provide a fair standard of comparison, and led evidence to show that the rates were comparable to those paid by what it considered to be comparable competitors. It should be noted that the respondent is engaged in both newspaper and commercial printing, requiring the services of employees affected by this application. The issue, however, is not the bargaining effectiveness of the intervener, the issue is rather whether the intervener has represented the group of employees in question properly, having in mind their status as members of a craft, and not unit.
- 6. HAVING IN MIND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER, THE BOARD IS OF OPINION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN THIS CASE.
- 7. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER D. McDERMOTT: (JANUARY 25, 1966.)

| DISSENT.

11246-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local Union No. 837 (Applicant) v. Tidey Construction Co. Ltd. (Respondent) v. Operative Plasterers and Cement Masons International Assoc. Local 298 (Intervener).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. W. FORGIE AND H. MANCINELLIE APPEARING FOR THE APPLICANT, D. E. TIDEY APPEARING FOR THE RESPONDENT AND DUNCAN MCGREGOR AND ANTHONY MARIANO APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: (JANUARY 13, 1966.)

"THE APPLICANT HAS APPLIED FOR CERTIFICATION FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE HAMILTON AREA. AT THE

HEARING HELD IN THIS MATTER IT WAS DISCLOSED THAT THE APPLICANT AND THE RESPONDENT WERE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT TRADE UNION AND THE HAMILTON CONSTRUCTION ASSOCIATION WHICH EXPIRED ON APRIL 30, 1965. THE RESPONDENT NOTIFIED THE HAMILTON CONSTRUCTION ASSOCIATION THAT IT WOULD NOT BE BOUND BY ANY NEW COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE ASSOCIATION AND THE APPLICANT. ACCORDINGLY, THE LIST OF NAMES OF EMPLOYERS FOR WHOM THE ASSOCIATION WAS BARGAINING AND WHICH WAS SUBMITTED TO THE APPLICANT AT THE COMMENCEMENT OF THE NEGOTIATIONS DID NOT CONTAIN THE NAME OF THE RESPONDENT. THE RESPONDENT COMPANY IS THUS NOT BOUND BY ANY CLOLLECTIVE AGREEMENT WHICH MAY HAVE BEEN ENTERED INTO BETWEEN THE APPLICANT AND THE HAMILTON CONSTRUCTION ASSOCIATION.

IT IS CLEAR THAT THERE HAS BEEN NO APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WHICH THE APPLICANT UNION HELD FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE HAMILTON AREA. IT IS ALSO CLEAR THAT THERE HAS BEEN NO ABANDONMENT OF THOSE BARGAINING RIGHTS BY THE APPLICANT TRADE UNION. IN THESE CIRCUMSTANCES, AND AS POINTED OUT TO THE PATIES AT THE HEARING, THE APPLICANT TRADE UNION STILL HAS BARGAINING RIGHTS FOR CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT COMPANY. IN THESE CIRCUMSTANCES, THERE IS NO NEED TO PROCESS THIS APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY TERMINATED."

# INDEXED ENDORSEMENT - SUCCESSOR STATUS

11179-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Galion Manufacturing of Canada Ltd. (Respondent) v. Galion Employees' Association (Predecessor Trade Union).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND GEORGE SPECHT FOR THE APPLICANT, R. D. MACDONALD AND E. F. S. SANDERS FOR THE RESPONDENT, WILLIAM O. HEROLD, BRYAN GREEN AND KENNETH GRANTHAM FOR THE OBJECTORS, NO ONE FOR THE PREDECESSOR TRADE UNION.

DECISION OF THE BOARD: (JANUARY 20, 1966.)

- This is an application for a declaration under section 47 of The Labour Relations Act that the applicant is the successor of Galion Employees' Association as Bargaining agent for all employees of the respondent.
- 2. THE APPLICANT CLAIMS THAT IT IS THE SUCCESSOR OF THE PREDECESSOR TRADE UNION BY REASON OF A MERGER BETWEEN THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND GALION EMPLOYEES! ASSOCIATION.
- 3. The predecessor trade union obtained voluntary recognition from the respondent and was a party to a subsisting collective agreement with the respondent which was entered into on January 15th, 1964 and was subsequently extended until the 3rd day of November, 1966.

4. It appeared from the evidence that all of the employees (37 in number) of the respondent were served by registered mail with notice of a meeting called by Galion Employees! Association. This notice of meeting reads as follows and is signed by the secretary-treasurer of the predecessor trade union.

#### "GALION EMPLOYEES ASSOCIATION

#### NOTICE OF MEETING

THE MEMBERSHIP WILL BE ASKED TO APPROVE THE MERGER OF GALION EMPLOYEES ASSOCIATION WITH UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA.

IF THE FOREGOING MOTION IS APPROVED THE APPROPRIATE STEPS WILL BE TAKEN AT THE SAME MEETING TO DISSOLVE THE ASSOCIATION.

THE MEETING WILL BE HELD AT Y. M. C. A.

# DATE: WEDNESDAY, NOVEMBER 17, 1965, AT 7:30 P.M."

- 5. The meeting of November 17th, 1965, was called by Galion Employees! Association and was chaired by Mr. George M. Richards, president of the Association.
- 6. MR. RICHARDS TESTIFIED THAT 30 OF THE EMPLOYEES OF THE RESPONDENT ATTENDED THE MEETING. HE FURTHER TESTIFIED THAT A MOTION ASKING THE MEMBER-SHIP TO APPROVE THE MERGER OF GALION EMPLOYEES! ASSOCIATION WITH THE APPLICANT WAS DISCUSSED BY THE MEETING, MOVED AND SECONDED FROM THE FLOOR AND PASSED AT THE MEETING BY A VOTE OF 29 IN FAVOUR AND ONE AGAINST. A SECOND MOTION WAS MOVED AND SECONDED, WHEREIN IT WAS RESOLVED THAT GALION EMPLOYEES! ASSOCIATION BE DISSOLVED. THIS MOTION WAS APPROVED BY A VOTE OF 29 TO 1.
- 7. THE VOTES TAKEN AT THE MEETING OF NOVEMBER 17TH, 1965, WERE BY A SHOW OF HANDS, WHICH METHOD OF VOTING WAS IN ACCORDANCE WITH THE TERMS OF THE GALION EMPLOYEES! ASSOCIATION CONSTITUTION.
- 8. Mr. George J. Specht, and International Representative of the applicant, testified that, having been approached by employees of the respondent, he attended a membership meeting of the predecessor trade union in October, 1965 and explained the advantages of merging with the applicant trade union and the procedural requirements necessary to effect such a merger.
- 9. Mr. Specht also testified that the Canadian Director of the applicant approved the proposed merger and subsequent to the meeting of November 17th, 1965, referred to above, the International Secretary-Treasurer of the applicant wrote a letter to the Board which reads as follows:

"This is to advise you that the merger or amalgamation of the Galion Employees! Association with the International Union United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) is approved by the said International Union."

- 10. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT THE PREDECESSOR TRADE UNION HAS SUBSTANTIALLY FULFILLED THE REQUIREMENTS TO EFFECT THE MERGER OF THE GALION EMPLOYEES! ASSOCIATION WITH THE APPLICANT.
- 11. THE BOARD IS FURTHER SATISFIED THAT THE APPLICANT HAS APPROVED AND ACCEPTED THE MERGER OF THE GALION EMPLOYEES! ASSOCIATION WITH THE APPLICANT.
- 12. THE BOARD THEREFORE FINDS THAT THE APPLICANT AND THE PREDECESSOR TRADE UNION HAVE SUBSTANTIALLY COMPLIED WITH THAT WHICH IS REQUIRED OF THEM TO EFFECT A MERGER.
- 13. THE BOARD THEREFORE DECLARES PURSUANT TO THE PROVISIONS OF SECTION 47(1) OF THE ACT THAT THE APPLICANT BY REASON OF A MERGER, IS THE SUCCESSOR OF THE PREDECESSOR TRADE UNION AND HAS ACQUIRED, AS OF NOVEMBER 17TH, 1965, THE RIGHTS, PRIVILEGES AND DUTIES OF GALION EMPLOYEES' ASSOCIATION, WHETHER UNDER THE COLLECTIVE AGREEMENT REFERRED TO ABOVE BETWEEN GALION EMPLOYEES' ASSOCIATION AND THE RESPONDENT, OR OTHERWISE, AND IS THE BARGAINING AGENT FOR THE UNIT OF EMPLOYEES OF THE RESPONDENT FOR WHOM GALION EMPLOYEES! ASSOCIATION WAS HERETOFORE THE BARGAINING AGENT.

### INDEXED ENDORSEMENT - SECTION 65

11175-65-U: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW and Local 641 (Complainant) vo Electronic Materiels of Canada Limited (Respondent).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER. (JANUARY 28, 1966.)

"ON THE AGREEMENT OF THE PARTIES AND SUBJECT TO THE CONDITIONS ON WHICH THE MATTER WAS PREVIOUSLY ADJOURNED, THIS MATTER IS ADJOURNED SINE DIE.

IF THIS MATTER SHOULD AGAIN BE LISTED FOR HEARING, IT WILL BE LISTED FOR PEREMPTORY HEARING AT THE CONVENIENCE OF THE BOARD."

DECISION OF BOARD MEMBER H. F. IRWIN: (JANUARY 28, 1966.)

THIS COMPLAINT MADE UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT WAS FIRST LISTED FOR HEARING AT OTTAWA ON JANUARY 6, 1966. ON JANUARY 3RD, A REQUEST FOR AN ADJOURNMENT WAS MADE TO THE BOARD AND, ON AGREEMENT OF THE PARTIES, THE ADJOURNMENT WAS GRANTED. ON JANUARY 4TH, THE BOARD MAILED AN OFFICIAL NOTICE TO THE PARTIES THAT THE CASE HAD BEEN RELISTED FOR HEARING IN OTTAWA ON JANUARY 28TH.

ON JANUARY 27th, THE DAY BEFORE THE SCHEDULED HEARING, COUNSEL FOR THE APPLICANT REQUESTED ADJOURNMENT SINE DIE ON THE UNDERSTANDING THAT HE WOULD RECOMMEND TO THE COMPLAINANT UNION THAT THE COMPLAINTS BE WITHDRAWN. COUNSEL FOR THE RESPONDENT AGREED TO THE REQUEST FOR ADJOURNMENT ON THAT UNDERSTANDING.

WHILE I AM NOT DISSENTING FROM THE DECISION TO GRANT THE ADJOURNMENT AS REQUESTED, I WISH TO RECORD MY STRONG RELUCTANCE TO GRANT LAST MINUTE REQUESTS

FOR ADJOURNMENT OF HEARINGS TO BE HELD OUTSIDE TORONTO. THE BOARD MUST MAKE TRAVELLING ARRANGEMENTS AND HOTEL RESERVATIONS FOR THE BOARD MEMBERS AND THE CLERK. TRANSPORTATION TICKETS MUST BE PURCHASED AND PICKED UP. SUITABLE ACCOMMODATION FOR THE HOLDING OF THE HEARING MUST BE FOUND AND RESERVED. THE PREPARATION AND TRANSPORTATION OF FILES AND EQUIPMENT MUST BE SUPERVISED.

IN ADDITION, BOARD MEMBERS MUST SET ASIDE, SEVERAL WEEKS IN ADVANCE, THE DAYS REQUIRED FOR TRAVELLING AND THE HEARING. THEIR OTHER BUSINESS ARRANGEMENTS MUST BE MADE ON THE ASSUMPTION THAT THE HEARING WILL BE HELD AS SCHEDULED. IF THE HEARING IS HELD, BOARD MEMBERS ASSIGNED TO THE CASE ARE EXPECTED TO BE THERE. CONSEQUENTLY, LAST MINUTE CANCELLATIONS CAUSE BOARD MEMBERS NOT ONLY GREAT INCONVENIENCE BUT THEY ARE OFTEN UNABLE TO EFFECTIVELY RE-ORGANIZE THEIR BUSINESS ACTIVITIES FOR THE DAYS CONCERNED ON SUCH SHORT NOTICE. IN SOME CASES, THEY HAD ALREADY REFUSED TO ACCEPT OTHER REMUNERATIVE ASSIGNMENTS FOR THE DAYS THEY HAD SET ASIDE FOR THE BOARD HEARING.

COURTESY TO THE BOARD SHOULD IMPEL COUNSEL AND OTHER REPRESENTATIVES
OF THE PARTIES TO REQUEST ADJOURNMENTS ONLY WHEN ABSOLUTELY NECESSARY AND
THEN AS FAR IN ADVANCE OF THE HEARING DATE AS POSSIBLE. I DO NOT BELIEVE
THAT THEY WOULD DELIBERATELY OR UNNECESSARILY INCONVENIENCE BOARD MEMBERS.
PERHAPS THEY HAVE NOT BEEN FULLY AWARE OF THE SPECIAL PREPARATION AND
ARRANGEMENTS THAT MUST BE MADE WHEN HOLDING HEARINGS OUTSIDE TORONTO. FOR
THE ABOVE REASONS, I FEEL PERSONALLY OBLIGED TO BRING THE ABOVE FACTS TO THEIR
ATTENTION AND REQUEST THEIR CONSIDERATION AND CO-OPERATION.

TO AVOID ANY MISUNDERSTANDING, THE WORDS "BOARD MEMBERS" WHEREVER USED IN MY REMARKS REFER ONLY TO MEMBERS REPRESENTING EMPLOYEES OR EMPLOYERS AND ARE NOT TO BE CONSTRUED OR INTERPRETED TO INCLUDE THE PRESIDING OFFICERS, I.E., THE CHAIRMAN, THE VICE-CHAIRMAN OR DEPUTY VICE-CHAIRMEN.

# INDEXED ENDORSEMENT - SECTION 47A

11104-65-M: THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, AND ITS LOCAL 440 (APPLICANT) v. THE BORDEN COMPANY LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES UNION, LOCAL 647, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: H. BUCHANAN AND F. JEAVONS APPEARING FOR THE APPLICANT, C. R. OSLER, Q.C., APPEARING FOR THE RESPONDENT, I. J. THOMSON, S. POWERS AND S. MILLAR APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: (DECEMBER 7, 1965.)

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "THE BORDEN COMPANY LIMITED:.
- 2. This is an application for relief under section 47a of The Labour Relations Act.
- 3. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

- 4. It appears that the applicant was a party to a collective agreement with London Pure Milk Company covering "all employees save and except office staff, managers and those above the rank of manager". The collective agreement became effective on September 1st, 1964 and was to run until September 1st, 1966.
- 5. THE RESPONDENT AND THE INTERVENER ARE PARTIES TO A COLLECTIVE AGREEMENT COVERING "ALL EMPLOYEES" OF THE RESPONDENT.
- 6. The respondent purchased the plant, equipment and goodwill of London Pure Milk Company on November 1st, 1965, including its list of customers whom the respondent has continued to serve. On November 2nd, 1965, the applicant gave notice to the respondent, in accordance with the provisions of section 47a (2), of its desire to bargain with a view to making a collective agreement with the respondent.
- 7. The respondent, on November 8th, 1965, advised the applicant that the respondent's employees were bargained for by the intervener. At the hearing there was filed a copy of the collective agreement between the applicant and London Pure Milk Company and a copy of the collective agreement between the respondent and the intervener.
- 8. IT APPEARS FROM THE EVIDENCE THAT ABOUT 40 EMPLOYEES OF LONDON PURE MILK COMPANY WHO WERE REPRESENTED BY THE APPLICANT, WERE TRANSFERRED TO THE OPERATION CARRIED ON BY THE RESPONDENT WHERE THEY WERE INTERMINGLED WITH ABOUT 48 EMPLOYEES WHO WERE REPRESENTED BY THE INTERVENER.
- 9. Having regard to the agreed facts and representations of the parties, the Board finds that the respondent purchased, within the meaning of section 47a (1), the business formerly carried on by London Pure Milk Company. Subsequently, the respondent intermingled, within the meaning of Section 47a (5), the employees of London Pure Milk Company who were represented by the applicant with employees of the respondent who were represented by the intervener.
- 10. THE BOARD DETERMINES THAT THE INTERMINGLED EMPLOYEES, IN THE CIRCUMSTANCES OF THIS CASE, CONSTITUTE ONE APPROPRIATE BARGAINING UNIT. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS LONDON DIVISION AT LONDON, SAVE AND EXCEPT MANAGERS, ROUTE FOREMEN, PERSONS ABOVE THE RANKS OF MANAGER AND ROUTE FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 11. Pursuant to the provisions of section 47a (7) and for the purpose of determining which trade union shall be the bargaining agent for the employees in the bargaining unit, the Board directs that a representation vote be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.
- 12. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

10188-64-M: Local Union No. 1005 United Steelworkers of America (Applicant) V. THE STEEL COMPANY OF CANADA LIMITED HILTON WORKS (RESPONDENT).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members E. Boyer and H. F. IRWIN.

APPEARANCES AT THE HEARING: D. LEWIS, Q.C., D. BROWN AND A. SHARP APPEARING FOR THE APPLICANT, C. A. MORLEY, J. B. THOMSON AND V. P. HARRIS APPEARING FOR THE RESPONDENT.

DECISION OF: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER.

(JULY 28, 1965.)

1. THE APPLICANT, PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT. IS REQUESTING THAT THE BOARD DETERMINE WHETHER THE PERSONS LISTED IN THE TWO CATEGORIES BELOW ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

#### O. H. OPERATING ENGINEERS

### ASST. SHIFT ENG. 148' PLATE MILL

G. CARTER

R. W. EWART

H. E. KRITZER

V. NOVIKS

J. C. ROLLO

D. C. HAWKINS D. R. JORDAN

W. J. PEACH

C. YOUNG

- 2. THE APPLICANT AND THE RESPONDENT ARE BOUND BY A COLLECTIVE AGREEMENT DATED JANUARY 6, 1965 WHICH REMAINS IN EFFECT UNTIL JULY 31, 1966. THE RECOGNITION SECTION OF THE AGREEMENT PROVIDES THAT THE COMPANY RECOGNIZES THE UNION AS THE CERTIFIED COLLECTIVE BARGAINING AGENCY FOR ALL THE HOURLY AND PRODUCTION EMPLOYEES OF THE COMPANY AT ITS HILTON WORKS WITH THE EXCEPTION OF PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES. (THERE ARE EXCEPTIONS OF OTHER PERSONS FROM THE BARGAINING UNIT WHICH ARE NOT MATERIAL IN THIS APPLICATION). THE SAME SECTION PROVIDES THAT ANY DIFFERENCE WHICH ARISES BETWEEN THE UNION AND THE COMPANY AS TO WHETHER A PERSON IS IN THE BARGAINING UNIT MAY BE TREATED AS A GRIEVANCE AND DEALT WITH UNDER THE PROCEDURE FOR ADJUSTING GRIEVANCES SET OUT IN ANOTHER SECTION OF THE COLLECTIVE AGREEMENT.
- THE APPLICANT PURSUANT TO THE TERMS OF THE COLLECTIVE AGREEMENT FILED A "POLICY GRIEVANCE" ON APRIL 19TH, 1965 WITH RESPECT TO THE PERSONS LISTED IN PARAGRAPH 1. (IT APPEARS FROM THE WORDING OF THE "POLICY GRIEVANCE" THAT ON FEBRUARY 23RD, 1965 THE RESPONDENT INFORMED THE APPLICANT THAT EFFECTIVE MARCH 1ST, 1965, THE JOB CLASSIFICATION OF O.H. OPERATING ENGINEER WOULD BE TAKEN OUT OF THE BARGAINING UNIT AND FURTHER THAT PERSONS PERFORMING THE NEW JOB OF ASSISTANT SHIFT ENGINEER 1487 PLATE MILL WOULD NOT BE INCLUDED IN THE BARGAINING UNIT). ON THE DATE OF THE HEARING OF THIS APPLICATION THERE HAD BEEN NO SETTLEMENT OF THE GRIEVANCE AND THE ARBITRATION PROCEDURE PROVIDED FOR IN THE AGREEMENT HAD NOT BEEN INSTITUTED.
- THE ARGUMENTS MADE BY COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT IN THIS APPLICATION IN ALL RELEVANT RESPECTS ARE THE SAME AS THE ARGUMENTS MADE BY THE PARTIES IN THE CANADIAN CAR FORT WILLIAM DIVISION ! AWKER SIDEELEY CANADA LTD. CASE (BOARD FILE NO. 10366-65-M). (SEE PAGE 763 OF THIS REPORT.

- On the evidence before it and for the reasons given in the above case, the Board finds that a question has arisen during the period of operation of the collective agreement between the parties as to whether the persons listed in paragraph 1 as 0.4. Operating Engineers and Assistant Shift Engineers 148' Plate Mill are employees for the purposes of the Labour Relations Act. The Board accordingly further finds that the applicant has brought itself within the provisions of section 79 (2) and is entitled to the relief which it is seeking in this application. We would mention that in view of the Board's finding in the Canadian Car Fort William Division Hawker Siddeley Canada Ltd. Case (supra) that the question as to whether a person is covered by a collective agreement and the question whether a person is an employee for the purpose of the Labour Relations Act are two separate issues, the fact that the applicant has proceeded by way of the grievance procedure provided for in the Collective agreement between the parities does not act as a bar to this application.
- 6. Mr. A. A. Morrow, Examiner, is authorized to inquire into and report to the Board on the duties and responsibilities of the named persons listed in paragraph 1.

DECISION OF: BOARD MEMBER H. F. IRWIN. (JULY 28, 1965.)

- 1. | DISSENT.
- 2. This is an application under section 79, subsection (2) of The Labour Relations Act. The subsection reads as follows:-
  - (2) IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

THE BOARD HAS ALWAYS INTERPRETED THE WORD "EMPLOYEE" IN THE SUBSECTION TO MEAN AN EMPLOYEE FOR THE PURPOSES OF THE ACT.

- 3. Persons not deemed to be employees for the purposes of the Act are defined in subsections (2) and (3) of section 1 and section 2 of the Act which read as follows:-
  - 1. (2) FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BY REASON ONLY OF HIS CEASING TO WORK FOR HIS EMPLOYER AS THE RESULT OF A LOCK-OUT OR STRIKE OR BY REASON ONLY OF HIS BEING DISMISSED BY HIS EMPLOYER CONTRARY TO THIS ACT OR TO A COLLECTIVE AGREEMENT.
    - (3) FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE,
      - (A) WHO IS A MEMBER OF THE ARCHITECTURAL,
        DENTAL, ENGINEERING, LAND SURVEYING,

LEGAL OR MEDICAL PROFESSION ENTITLED
TO PRACTISE IN ONTARIO AND EMPLOYED IN
A PROFESSIONAL CAPACITY; OR

- (B) WHO, IN THE OPINION OF THE BOARD,
  EXERCISES MANAGERIAL FUNCTIONS OR IS
  EMPLOYED IN A CONFIDENTIAL CAPACITY
  IN MATTERS RELATING TO LABOUR RELATIONS.
- 2. This ACT DOES NOT APPLY,
  - (A) TO A DOMESTIC EMPLOYED IN A PRIVATE HOME;
  - (B) TO A PERSON EMPLOYED IN AGRICULTURE, HUNTING OR TRAPPING:
  - (C) TO A PERSON, OTHER THAN AN EMPLOYEE OF A MUNICIPALITY OR A PERSON EMPLOYED IN SILVACULTURE, WHO IS EMPLOYED IN HORTICULTURE BY AN EMPLOYER WHOSE PRIMARY BUSINESS IS AGRICULTURE OR HORTICULTURE;
  - (D) TO A MEMBER OF A POLICE FORCE WITHIN THE MEANING OF THE POLICE ACT;
  - (E) TO A FULL-TIME FIRE FIGHTER WITHIN THE MEANING OF THE FIRE DEPARTMENTS ACT; OR
  - (f) TO A TEACHER AS DEFINED IN THE TEACHING PROFESSION ACT.
- 4. Before the Board has jurisdiction to make a determination under subsection (2) of section 79 of the Act, a question must have arisen between the parties, who are bargaining for a collective agreement or during the operation of a collective agreement to which the parties are bound, as to whether a person is an employee for the purposes of the Act. In such circumstances, either of the parties may refer the matter in question to this Board whose decision is final and binding for all purposes.
- 5. In the instant case, the parties to this proceeding are bound by a collective agreement dated January 6, 1965 and which remains in effect until July 31, 1966. No viva voce evidence was adduced at the hearing. The following exhibits were filed by the respondent:-
  - EXHIBIT #1 COLLECTIVE AGREEMENT DATED JANUARY 6TH, 1965
    BETWEEN HILTON WORKS, THE STEEL COMPANY OF
    CANADA, LIMITED AND LOCAL UNION No. 1005,
    UNITED STEELWORKERS OF AMERICA.

THE RESPONDENT DIRECTED THE BOARD S ATTENTION TO THE FOLLOWING PROVISIONS OF THE COLLECTIVE AGREEMENT:

### SECTION 2.01

THE COMPANY RECOGNIZES THE UNION AS THE CERTIFIED COLLECTIVE BARGAINING AGENCY FOR ALL THE HOURLY AND PRODUCTION EMPLOYEES OF THE COMPANY AT ITS HILTON WORKS, BUT EXCEPTING:

- (A) OFFICERS AND OFFICIALS OF THE COMPANY,
- (B) PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE, OR DISCIPLINE EMPLOYEES,
- (c) POLICEMEN,
- (D) BRICKLAYERS AND MASONS EMPLOYED AS MAINTENANCE MEN,
- (E) PATTERNMAKERS.

#### SECTION 2.02

THE TERM "EMPLOYEE" OR "EMPLOYEES" AS USED IN THIS AGREEMENT SHALL MEAN ONLY SUCH PERSONS AS ARE INCLUDED IN THE ABOVE-DEFINED BARGAINING UNIT.

## SECTION 2.03

ANY DIFFERENCE WHICH ARISES BETWEEN THE UNION AND THE COMPANY AS TO WHETHER A PERSON IS IN THE SAID BARGAINING UNIT MAY BE TREATED AS A GRIEVANCE AND DEALT WITH UNDER THE PROCEDURE FOR ADJUSTING GRIEVANCES SET FORTH IN SECTION 8 HEREOF

# SECTION 6.01

The Co-operative Wage Study (C.W.S.) Manual for Job Description, Classification and Wage Administration, dated October 1, 1956, (Hereinafter referred to as "The Manual") is incorporated in this agreement as Appendix "A".

# SECTION 6.48

The Union may file a grievance beginning at Step No. 3 alleging that the Company has established a new Job, or changed the Job content of an existing Job to the extent of one full Job class or more, and has failed to develop and submit a new description and classification made in such case any change in Job class shall become effective in accordance with 6.45 (c), provided, however, that retroactivity shall not apply for more than sixty (60) days prior to the date the grievance was filed at Step No. 3.

EXHIBIT #2 - Manual for Job Description, Classification and Wage Administration, dated October 1, 1956.

SECTION 6.05 OF THE MANUAL READS AS FOLLOWS:-

The Union may file a grievance beginning at Step No. 3 alleging that the Company has established a new job, or changed the job content of an existing job to the extent of one full job class or more, and has failed to develop and submit a new description and classification and in such case any change in job class shall become effective in accordance with 6.03 (c), provided however that retroactivity shall not apply for more than sixty (60) days prior to the date the grievance was filed at Step No. 3.

EXHIBIT #3 - ORDER OF LABOUR COURT, DATED APRIL 6, 1944.

By the terms of this Order, Local 1005, United Steelworkers of America were certified for the following unit of EMPLOYEES:-

THIS COURT DOTH DECLARE THAT THE UNIT OF THE EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR THE PURPOSE OF COLLECTIVE BARGAINING SHALL CONSIST OF ALL THE HOURLY AND PRODUCTION EMPLOYEES AT THE HAMILTON WORKS OF THE RESPONDENT, WITH THE EXCEPTION OF OFFICIALS OF THE COMPANY, POLICEMEN, AND ALL OTHER OFFICERS, OFFICIALS AND PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY AND PERSONS HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES, AND BRICKLAYERS AND MASONS EMPLOYED AS MAINTENANCE MEN, BUT INCLUDING IN SUCH UNIT CERTAIN EMPLOYEES WHO ARE EMPLOYED BY THE RESPONDENT FOR THE ACCOUNT OF GENERAL SMELTING COMPANY OF CANADA LIMITED, AND WHO ARE HIRED AND MAY BE DISMISSED BY THE RESPONDENT AND DOTH ORDER THE SAME ACCORDINGLY.

EXHIBIT # - GRIEVNACE, DATED APRIL 19, 1965

THE GRIEVANCE READS AS FOLLOWS:-

AT A MEETING HELD ON FEBRUARY 23, 1965, THE COMPANY INFORMED THE UNION THAT, EFFECTIVE MARCH 1, 1965, SOME OF THE EMPLOYEES WHO ARE INCUMBENTS ON THE JOB OF UT.13, OPERATING ENGINEER, JOB CLASS 15, WOULD BE TAKEN OUT OF THE BARGAINING UNIT, THEREFORE MAKING THE JOB OF UT.13 OPERATING ENGINEER PRACTICALLY REDUNDANT.

AT THE SAME MEETING THE COMPANY STATED THAT THE EMPLOYEES WHO WOULD PERFORM THE NEW JOB OF ASSISTANT SHIFT ENGINEER IN THE BOILER ROOM OF THE NEW 1481 PLATE MILL, WOULD NOT BE IN THE BARGAINING UNIT, NOR WOULD THIS PLATE MILL JOB BE DESCRIBED AND CLASSIFIED AS A BARGAINING UNIT JOB.

WE THEREFORE GRIEVE THAT THIS ACTION BY THE COMPANY IS IN VIGLATION OF VARIOUS SECTIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE UNION DATED JANUARY 6, 1965.

WE THEREFORE REQUEST THAT THE COMPANY RETURN THESE EMPLOYEES AND THEIR JOBS TO THE BARGAINING UNIT IN ACCORDANCE WITH THE RECOGNITION AND OTHER SECTIONS OF THE COLLECTIVE AGREEMENT.

NO EVIDENCE WAS ADDUCED AT THE HEARING BY THE APPLICANT.

- 6. IN PARAGRAPH 5 OF THE APPLICATION, THE APPLICANT STATES AS FOLLOWS:-
  - During the period of operation of the said collective agreement between the above noted parties a question has arisen as to whether the following persons are employees of the Respondent, namely:-

(THE NAMES OF 9 PERSONS AND THEIR RESPECTIVE OCCUPATIONS FOLLOW)
(EMPHASIS ADDED)

- There is no evidence before the Board that a grievance has arisen between the parties as to whether the 9 persons named in the application are employees for the purposes of the Act. On the contrary, Exhibit #4, supra, which is a copy of the grievance filed on April 19, 1965 by the applicant union with the company under the grievance procedure stipulated in the collective agreement in respect of the same matter refers to a meeting of the parties at which the respondent announced to the employees that certain employees "would be taken out of the bargaining unit" and that certain new job classifications "would not be in the bargaining unit".
- 8. In clear and unambiguous language, the applicant has stated that the issue between the parties is whether or not certain employees are within the bargaining unit. This is an issue which this Board has held continuously and unreservedly is distinct from the question as to whether persons are employees for the purposes of the Act as defined in section 79(2) thereof.
- 9. The onus is clearly upon the applicant, not the respondent as stated in the Board's NOTICE OF HEARING, Form 7, to be certain that evidence is adduced at the hearing to show that a question has arisen between the parties in accordance with the provisions of section 79(2) of the Act. As the required evidence was not so adduced, the Board Lacks Jurisdiction to make the determination requested and the application must be dismissed.

10188-64-M: Local Union No. 1005 United Steelworkers of America (Applicant)

v. The Steel Company of Canada Limited Hilton Works (Respondent).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

DECISION OF: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER.

(OCTOBER 25, 1965.)

1. Counsel for the respondent has requested that the Board reconsider its decision of July 28th, 1965 in this matter. The Board has considered the arguments advanced by counsel in support of the request which are CONTAINED IN HIS LETTERS TO THE BOARD DATED AUGUST 5TH AND SEPTEMBER 30TH, 1965. THE BOARD HAS CONSIDERED ALSO THE REPLY OF COUNSEL FOR THE RESPONDENT WHICH IS CONTAINED IN HIS LETTER TO THE BOARD DATED SEPTEMBER 14TH, 1965.

- 2. Counsel for the respondent submits that there is no evidence before the Board upon which to base its finding that a question has arisen between the parties as to whether the persons named in the application are employees for the purpose of The Labour Relations Act.
- THE RECOGNITION SECTION OF THE COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE PARTIES PROVIDES THAT THE COMPANY RECOGNIZES THE UNION AS THE CERTIFIED COLLECTIVE BARGAINING AGENCY FOR ALL HOURLY AND PRODUCTION EMPLOYEES OF THE COMPANY AT ITS HILTON WORKS WITH THE EXCEPTION OF PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY, DISCHARGE OR DISCIPLINE EMPLOYEES. (OTHER CLASSIFICATIONS, WHICH ARE NOT HERE MATERIAL. ALSO EXCLUDED FROM THE BARGAINING UNIT). AT THE HEARING OF THIS MATTER ON May 12th, 1965, counsel for the applicant stated that in February of this YEAR THE RESPONDENT INFORMED THE APPLICANT THAT THE PERSONS NAMED IN THE APPLICATION (LISTED IN PARAGRAPH 1 OF THE BOARD'S DECISION OF JULY 28TH, 1965) IN THE JOB CLASSIFICATIONS OF O. H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 148! PLATE MILL, WHO HAD PREVIOUSLY BEEN INCLUDED IN THE BARGAINING UNIT, WOULD CEASE TO BE IN THE BARGAINING UNIT AS OF MARCH 1ST, 1965. THIS STATE-MENT IS IN ACCORD WITH EXHIBIT # FILED BY THE RESPONDENT. COUNSEL FOR THE APPLICANT ALSO STATED THAT THE RESPONDENT HAD INFORMED THE APPLICANT THAT THE REASON THAT THE PERSONS CONCERNED WERE REMOVED FROM THE BARGAINING UNIT WAS BECAUSE THEY EXERCISED MANAGERIAL FUNCTIONS. THE APPLICANT CHALLENGED THE EXCLUSION OF THE PERSONS FROM THE ABOVE JOB CLASSIFICATIONS FROM THE BARGAINING UNIT AND FILED A POLICTY GRIEVANCE (EXHIBIT #4) WITH RESPECT TO THEM.
- 4. IN THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE, BOARD FILE NO. 10386-64-M, THE BOARD RECOGNIZED THAT THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND THE QUESTION AS TO WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSE OF THE ACT ARE TWO SEPARATE ISSUES. THE BOARD FURTHER RECOGNIZED THAT THE FORMER QUESTION IS PROPERLY ONE FOR DETERMINATION UNDER THE GRIEVANCE AND ARBITRATION PROCEDURES PROVIDED FOR IN THE COLLECTIVE AGREEMENT AND THAT THE LATTER QUESTION IS ONE THAT FALLS WITHIN THE JURISDICTION OF THE BOARD. IT IS COMMON GROUND BETWEEN THE PARTIES THAT A QUESTION HAS ARISEN AS TO WHETHER THE PERSONS IN THE CLASSIFICATIONS CONCERNED ARE COVERED BY THE COLLECTIVE AGREEMENT. ON THE EVIDENCE BEFORE IT THE BOARD FOUND THAT THE QUESTION ALSO HAS ARISEN AS TO WHETHER THE PERSONS IN THE CLASSIFICATIONS OF O. H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 1481 PLATE MILL ARE EMPLOYEES FOR THE PURPOSE OF THE ACT.
- OUR OPINION IS BASED ON THE FOLLOWING CONSIDERATIONS. Having REGARD BOTH TO THE REPRESENTATIONS OF THE PARTIES AND THE DESCRIPTION OF THE BARGAIN-ING UNIT CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, IT IS APPARENT THAT THE PERSONS IN THE JOB CLASSIFICATIONS OF 0. H. OPERATING ENGINEERS AND ASST. SHIFT ENG. 148' PLATE MILL WERE EXCLUDED FROM THE BARGAIN-ING UNIT BY THE RESPONDENT BECAUSE THE RESPONDENT CONSIDERED THEM TO BE EMPLOYED IN A MANAGERIAL CAPACITY. IN OUR VIEW, WHEN THE APPLICANT CHALLENGED THE ACTION OF THE RESPONDENT IN REMOVING THE PERSONS CONCERNED FROM THE BARGAINING UNIT THE QUESTION AS TO WHETHER THEY ARE EMPLOYEES FOR THE PURPOSE OF THE ACT IMMEDIATELY AROSE. LET US ASSUME, HOWEVER, FOR THE PURPOSE OF

ARGUMENT THAT THE BOARD WERE TO FIND THAT THE PERSONS IN THE ABOVE TWO CLASSIFICATIONS ARE EMPLOYEES FOR THE PURPOSE OF THE ACT. IT IS STILL CONCEIVABLE THAT DESPITE SUCH A FINDING AN ARBITRATOR MIGHT FIND THAT THE SAME PERSONS FALL WITHIN THE EXCEPTION FROM THE BARGAINING UNIT OF "PERSONS ACTING IN A SUPERVISORY OR CONFIDENTIAL CAPACITY OR HAVING AUTHORITY TO EMPLOY. DISCHARGE OR DISCIPLINE EMPLOYEES". THE BOARD'S DETERMINATION UNDER SECTION 1(3)(B) OF THE ACT, NEVERTHELESS, WOULD BY NO MEANS BE AN ACADEMIC EXERCISE. FOR, AS WAS NOTED BY COUNSEL FOR THE APPLICANT A FINDING BY THE BOARD AS TO WHETHER THE PERSONS CONCERNED ARE EMPLOYEES FOR THE PURPOSE OF THE ACT WILL BE A DETERMINING FACTOR FOR THE APPLICANT IN DECIDING WHETHER TO PROCEED TO ARBITRATION ON THE GRIEVANCES ALREADY FILED ON THE ISSUE AS TO WHETHER THESE PERSONS ARE COVERED BY THE COLLECTIVE AGREEMENT. IN OTHER WORDS, WHILE THE TWO QUESTIONS MAY BE DIFFERENT, A DETERMINATION OF THE FORMER QUESTION IS CLEARLY RELATED AND RELEVANT TO ANY DETERMINATION OF THE LATTER QUESTION. WE WOULD POINT OUT THAT BY ITS CAREFUL AVOIDANCE OF ANY ADMISSION OR DENIAL AS TO WHETHER THE PERSONS CONCERNED ARE EMPLOYEES FOR THE PURPOSE OF THE ACT THE RESPONDENT ITSELF APPARENTLY RECOGNIZES THE RELEVANCE OF THE QUESTION. ACCORDINGLY, TO HOLD ON THE EVIDENCE BEFORE US THAT NO QUESTION HAS EVEN ARISEN AS TO WHETHER THE PERSONS IN THE TWO CLASSIFICATIONS, WHICH THE RESPONDENT HAS REMOVED FROM THE BARGAINING UNIT. ARE EMPLOYEES FOR THE PURPOSE OF THE ACT WOULD NOT BE IN ACCORD WITH THE REALITIES OF THE SITUATION IN THE INSTANT CASE.

- Counsel for the respondent, in the alternative, made the following SUBMISSION: THE BOARD IMPROPERLY, AND TO THE PREJUDICE OF THE RESPONDENT, PLACED THE ONUS ON THE RESPONDENT TO ESTABLISH THAT THE APPLICANT IS NOT ENTITLED TO THE RELIEF IT IS SEEKING; SINCE THE APPLICANT ADDUCED NO EVIDENCE THE BOARD MUST HAVE BASED ITS DECISION SOLELY ON THE EVIDENCE ADDUCED BY THE RESPONDENT; THE ONUS WAS PROPERLY ON THE APPLICANT AND HAVING FAILED TO DISCHARGE THAT ONUS, THE APPLICATION MUST FAIL. IT IS CLEAR FROM THE FACTS OUTLINED IN PARAGRAPH 3 THAT IS COMMON GROUND BETWEEN THE PARTIES THAT IN FEBRUARY OF 1965 THE RESPONDENT REMOVED THE PERSONS NAMED IN THIS APPLICATION FROM THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT DURING THE PERIOD OF THE OPERATION OF THAT AGREEMENT. ACCORDINGLY, WE FIND NO MERIT IN THE SUBMISSION OF COUNSEL FOR THE RESPONDENT OUTLINED ABOVE. WHILE IT MAY BE THAT THE WORDING OF THE BOARD'S NOTICE OF HEARING WAS MISLEADING AS TO THE QUESTION OF ONUS, IF INDEED ANY QUESTION OF ONUS ARISES IN THIS PROCEEDING, THE BOARD IN THE CONDUCT OF THE CASE REQUIRED THE APPLICANT TO ESTABLISH ITS ENTITLEMENT TO THE RELIEF IT IS SEEKING AND WE ARE SATISFIED THAT IT HAS DONE SO. IT IS PERHAPS TRITE TO COMMENT THAT THE BOARD IS ENTITLED TO RELY ON ALL THE EVIDENCE BEFORE IT AND TO MAKE FINDINGS ON EVIDENCE ADDUCED BY ONE PARTY WHICH MAY ADVERSELY EFFECT THE INTEREST OF THAT PARTY. WE WOULD FURTHER POINT OUT THAT IT IS APPARENT THAT THE EVIDENCE PRESENTED BY THE RESPONDENT WAS PLACED BEFORE THE BOARD FOR THE PURPOSE OF SUPPORTING ITS OWN POSITION AND NOT TO SATISFY AN ALLEGEDLY IMPROPER ONUS PLACED UPON IT BY THE BOARD.
- 7. Counsel for the respondent further submits that in arriving at its decision in the instant case the Board relied on its decision in the Canadian Car Fort william Division Hawker Siddeley Canada Ltd. Case (supra). Counsel argues that since the case was heard subsequent to the instant application the respondent did not have an opportunity to deal with the decision in its argument. The Board based its decision of July 28th, 1965 on the evidence and argument presented in the instant case. The Board made reference to the decision in the Canadian Car Fort William Division Hawker Siddeley Canada Ltd. Case (supra), however, because of the similarity of the

ISSUES, FACTS AND ARGUMENT. (IN THE LATTER CASE, DIFFERENT CONSIDERATIONS APPLIED TO PERSONS IN A JOB CLASSIFIFACTION OF ENGINEERS—IN-TRAINING, BUT THE SAME CONSIDERATIONS WERE RELEVANT TO THE CLASSIFICATIONS OF ACCOUNTING CLERKS AND PROGRAMERS). NO ARGUMENTS WERE PRESENTED BY THE APPLICANT OR THE RESPONDENT IN THAT CASE, AFFECTING THE BOARD'S DECISION IN THE INSTANT APPLICATION, WHICH THE PRESENT RESPONDENT DID NOT HAVE AN OPPORTUNITY TO MEET. IN ANY EVENT, EVEN IF THERE WERE ANY MERIT IN THE CLAIM OF CUNSEL FOR THE RESPONDENT HE HAS MADE HIS ARGUMENT BASED ON THE CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE (SUPRA) IN THE REQUEST FOR RECONSIDERATION CONTAINED IN HIS LETTERS OF AUGUST 5TH AND SEPTEMBER 30TH. HAVING CONSIDERED HIS ARGUMENT, WE FIND NO REASON TO ALTER OUR DECISION OF JULY 28TH, 1965.

DECISION OF: BOARD MEMBER H. F. IRWIN. (OCTOBER 25, 1965.)

In the endorsement of the Board in this matter dated July 28th, 1965, I dissented from the decision of the majority on the grounds that there is an onus on the applicant to adduce evidence to show that a question has arisen between the parties in accordance with the provisions of section 79(2) of the Act and that the applicant falled to discharge that onus. I accordingly found that the Board Lacked Jurisdiction to make the determination requested by the applicant and that the application must be dismissed. On the basis of the written representations of the parties received by the Board since that issuance of its endorsement of July 28th, I find no reason to alter my decision of July 28th, 1965.

10386-65-M: Office Employees International Union Local #81 (Applicant) v. Canadian Car Fort William Division Hawker Siddeley Canada Ltd. (Respondent).

BEFORE: J. H. Brown, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: D. LEWIS, Q.C., FOR THE APPLICANT, B. M. W. Paulin and G. B. Weiler, Q.C., appearing for the respondent.

DECISION OF THE BOARD: (JULY 7, 1965.)

1. The applicant is requesting, pursuant to section 79(2) of the Labour Relations Act, that the Board determine whether the persons set out in Schedule A attached to the application are employees of the respondent for the purposes of the Labour Relations Act. Schedule A lists the following names and job classifications:

ENGINEERS-IN-TRAINING			ACCOUNTING CLERKS
M.	J.	ANWAR	N. LEMISKI
W.	Н.	BRICKNELL	J. E. MCILROY
Н.	K.	BUMULLER	
D.	J.	ELKINS	
J.	G.	MACLEOD	
J.	Μ.	MULLER	PROGRAMERS
J.	Α.	MUNRO	
Н.	С.	RALPH	F. O. JONES
Α.	J.	WILDEY	D. C. WORTH

2. The applicant and respondent are bound by a collective agreement effective from January 13th, 1964 to August 31st, 1965. Item 4 in the collective agreement entitled "Recognition and Representation" reads:

THE COMPANY RECOGNIZES OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL #81, DULY CERTIFIED BARGAINING AGENTS BY THE ONTARIO LABOUR RELATIONS BOARD, AS THE SOLE BARGAINING AGENCY IN RESPECT OF THOSE EMPLOYEES IN THE FORT WILLIAM PLANT WHO ARE COVERED BY THIS AGREEMENT.

ITEM 5 OF THE COLLECTIVE AGREEMENT ENTITLED "ELIGIBILITY" READS:

ALL SALARIED EMPLOYEES OF THE FORT WILLIAM PLANT, EXCEPT THOSE LISTED BELOW, ARE ELIGIBLE FOR MEMBERSHIP IN THE UNION AND ARE SUBJECT TO THE TERMS OF THIS AGREEMENT:

- (1) ALL DEPARTMENT HEADS:
- (2) ONE SECRETARY TO EACH DEPARTMENT HEAD;
- (3) ALL FOREMEN AND ALL SUPERVISORS REPORTING DIRECTLY TO A DEPARTMENT HEAD;
- (4) ALL PERSONS EMPLOYED IN A CONFIDENTIAL MANAGEMENT FUNCTION AND CERTAIN EMPLOYEES OTHER THAN GROUP (3) ABOVE WHO ARE EMPLOYED IN A SUPERVISORY OR SALES CAPACITY. A LIST OF THESE EMPLOYEES SHALL BE MUTUALLY AGREED UPON BETWEEN THE COMPANY AND THE UNION PRIOR TO THEIR REMOVAL FROM THE UNION ELIGIBILITY LIST.

ANY OPERATION PRESENTLY BEING PERFORMED BY A SALARY RATED EMPLOYEE WILL NOT BE CHANGED TO AN HOURLY EMPLOYEE FUNCTION UNLESS BY MUTUAL CONSENT.

ITEM 28 OF THE COLLECTIVE AGREEMENT ENTITLED "POLICY GRIEVANCE" READS:

AN ALLEGATION BY EITHER PARTY THAT THE AGREEMENT HAS BEEN MISINTERPRETED OR VIOLATED MAY BE LODGED IN WRITING (LETTER FORM) AS A POLICY GRIEVANCE AND, FAILING SATISFACTORY SETTLEMENT THE POLICY GRIEVANCE MAY THEN BE APPEALED TO ARBITRATION.

- 3. The applicant pursuant to Item 28 of the collective agreement filed a "Policy Grievance" on February 3rd, 1964 with respect to two persons categorized by the respondent as Engineers-in-Training and the grievance subsequently was referred to arbitration. By the award of the arbitration board dated June 29th, 1964, the majority found that the persons in question were not covered by the collective agreement and the grievance was dismissed.
- 4. Counsel for the respondent submits that the purpose of this application is to have the Board make a determination as to whether the persons listed in Schedule A fall within the bargaining unit described in Item 5 of the collective agreement. This he alleges is the real issue between the parties. He argues that even if the Board were to make a

DECISION AS TO WHETHER THE PERSONS IN QUESTION WERE EMPLOYEES IT WOULD NOT RESOLVE THE ISSUE. COUNSEL EMPHASIZED THAT AN AWARD ALREADY HAS BEEN MADE BY A BOARD OF ARBITRATION WITH RESPECT TO THE CATEGORY OF ENGINEERS—IN—
TRAINING. HE ARGUES THAT THE APPLICANT IS ATTEMPTING TO UTILIZE THIS BOARD AS AN APPELLATE TRIBUNAL IN AN EFFORT TO UPSET THE FINDING OF THE BOARD OF ARBITRATION. IF THE BOARD WERE TO ACCEDE TO THIS REQUEST, COUNSEL ENVISAGED THE POSSIBILITY OF CONFLICTING DECISIONS BY THE TWO TRIBUNALS, BOTH OF WHICH DECISIONS WOULD BE BINDING ON THE PARTIES. HE ARGUES THAT SUCH A RESULT WOULD BE WHOLLY UNTENABLE. ACCORDINGLY, COUNSEL SUBMITS THAT THE APPLICANT IS NOT ENTITLED TO THE RELIEF WHICH IT IS SEEKING.

Counsel for the applicant submits that a question has arisen during the period of the operation of the collective agreement as to whether the persons listed on Schedule A above are employees. He argues that a distinction must be made between the question as to whether the persons are covered by the collective agreement and the question whether they are employees for the purpose of the Labour Relations Act. Counsel concedes that with respect to the former question, it is properly a matter to be dealt with by the grievance procedure and a board of arbitration. With regard to the latter question, however, he refers to the wording of subsection 1 of section 79, which reads:

IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

He argues that the above wording makes it abundantly clear that the question as to whether a person is an employee is a matter for determination by the Board. Counsel submits that his argument is supported by the wording of subsection (3)(B) of section 1, which reads:

FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE, WHO, IN THE OPINION OF THE BOARD, EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

HE ARGUES THAT BY THE USE OF THE WORDS "IN THE OPINION OF THE BOARD", ONLY THIS BOARD, AND NOT A BOARD OF ARBITRATION, CAN DECIDE WHO IS AN EMPLOYEE WITHIN THE MEANING OF THE ACT. SINCE THERE ARE TWO SEPARATE AND DISTINCT QUESTIONS, ONE OF WHICH PROPERLY FALLS WITHIN THE JURISDICTION OF A BOARD OF ARBITRATION AND THE OTHER OVER WHICH THIS BOARD HAS EXCLUSIVE JURISDICTION, THERE CAN BE NO CONFLICT BETWEEN THE DECISIONS OF THIS BOARD AND A BOARD OF ARBITRATION.

6. Counsel for the respondent cited a number of earlier decisions of the Board in support of his argument and the Board has considered these cases in arriving at its decision. In the VeraElkington and the Wallage Barnes Company Ltd. Case, (1961) Canadian Labour Law Cases, 1960-64, 416,198, C.L.S.. 76-742, an application under section 68(2) (now section 79(2)) of the Labour Relations Act was made by an individual on her own behalf for a declaration that she was

AN EMPLOYEE OF THE RESPONDENT COMPANY. THE BOARD DISMISSED THE APPLICATION ON THE GROUNDS THAT SECTION 68(2) WAS DESIGNED TO DEAL WITH QUESTIONS WHICH MAY ARISE BETWEEN THE PARTIES. THE BOARD STATED THAT IT WAS NEVER INTENDED THAT EMPLOYEES SHOULD BE ABLE TO REFER A QUESTION UNDER SECTION 68(2) TO THE BOARD, BUT RATHER THIS WAS LEFT TO ONE OR MORE OF THE PARTIES TO THE COLLECTIVE AGREEMENT. IN THE MORSE CHAIN OF CANADA LIMITED CASE, (1961) CANADIAN LABOUR LAW CASES, Vol. 2, 1960-64, 416,225, C.L.S. 76-814, THE BOARD REFUSED TO MAKE A DETERMINATION IN AN APPLICATION MADE UNDER SECTION 79(2) ON THE BASIS THAT AT THE RELEVANT TIME, THERE WAS NO ISSUE BETWEEN THE PARTIES AS TO WHETHER THE PERSON IN QUESTION WAS AN EMPLOYEE, BUT RATHER THE ISSUE WAS WHAT RIGHTS, IF ANY, THAT EMPLOYEE HAD UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. IN OUR OPINION, THE CIRCUMSTANCES OF THE ABOVE CASES ARE DISTINGUISHABLE FROM THOSE IN THE INSTANT CASE. REFERENCE WAS ALSO MADE TO THE BOARD'S DECISION IN THE INDUSTRIAL FOOD SERVICES DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED CASE, (1962) CANADIAN LABOUR LAW CASES, Vol. 2, 1960-64, 416,228, C.L.S. 76-843. WE WOULD POINT OUT THATTHIS WAS AN APPLICATION UNDER SECTION 79(1) OF THE ACT, AND THE DECISION OF THE BOARD WAS BASED ON THAT SUBSECTION.

- 7. THE BOARD ACCEPTS THE DISTINCTION DRAWN BY COUNSEL FOR THE APPLICANT BETWEEN THE QUESTION AS TO WHETHER A PERSON IS COVERED BY A COLLECTIVE AGREEMENT AND WHETHER A PERSON IS AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. WE WOULD POINT OUT THAT COUNSEL FOR THE RESPONDENT IN HIS ARGUMENT NOTED, BY WAY OF EXAMPLE, THAT AN EXCEPTION TO THE BARGAINING UNIT IN THE INSTANT CASE IS "ONE SECRETARY TO EACH DEPARTMENT HEAD". HE ADMITS THAT WHILE SUCH PERSONS ARE EXCLUDED FROM THE BARGAINING UNIT THEY MAY BE EMPLOYEES FOR THE PURPOSES OF THE ACT. CONVERSELY, HE MADE REFERENCE TO THE CONSTRUCTION INDUSTRY WHERE HE RECOGNIZED THAT, IN SOME INSTANCES, FOREMEN ARE INCLUDED IN THE BARGAINING UNIT, ALTHOUGH THEY MAY NOT BE EMPLOYEES FOR THE PURPOSE OF THE ACT. IN OUR VIEW, THE ABOVE EXAMPLES SERVE TO ILLUSTRATE THE SEPARATENESS OF THE TWO QUESTIONS. IN FACT, THE BOARD IN THE STEEL CO. OF CANADA LTD. CASE (BOARD FILE No. 1988-61-M), WHICH WAS AN APPLICATION UNDER SECTION 79(1) OF THE ACT, RECOGNIZED THE DIFFERENCE BETWEEN THE TWO ISSUES. IN THAT CASE, WHILE THE BOARD FOUND ON THE EVIDENCE BEFORE IT THAT THE CREW FOREMEN EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE WERE NOT EMPLOYEES WITHIN THE MEANING OF SECTION 1(3), IT DECLINED TO MAKE ANY DETERMINATION AS TO WHETHER THE CREW FOREMEN WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.
- 8. . It is common ground between the parties that a determination of the question as to whether a person is covered by a collective agreement is properly a matter for a board of arbitration. We accept, however, the argument of counsel for the applicant that the question as to whether a person is an employee falls within the jurisdiction of this Board under section  $79(2)_{\bullet}$ . Since there are two separate issues we do not envisage the conflict between a decision of the Board and an award by a board of arbitration, suggested by counsel for the respondent.
- 9. Having regard to the above considerations the Board finds that the applicant has brought itself within the provisions of section 79(2) and is entitled to the relief that it is seeking in this application with respect to the persons listed in Schedule A as Accounting Clerks and Programers, since a question has arisen during the period of operation of the collective agreement between the parties as to whether these persons are employees for the purpose of the Act.

- 10. A DIFFERENT SITUATION, HOWEVER, EXISTS WITH RESPECT TO THE ENGINEERS-IN-TRAINING. IT IS CLEAR THAT ANY QUESTION AS TO WHETHER PERSONS ARE EMPLOYEES MUST ARISE WITH RESPECT TO THE RIGHT OF THE BARGAINING AGENT TO BARGAIN ON THEIR BEHALF, OR BE RELATED TO THEIR RIGHTS UNDER A COLLECTIVE AGREEMENT. SINCE THE BOARD OF ARBITRATION IN ITS AWARD DATED JUNE 29TH, 1964 FOUND ENGINEERS-IN-TRAINING ARE NOT IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, IT CANNOT BE SAID THAT A QUESTION HAS ARISEN AT THIS TIME AS TO WHETHER THEY ARE EMPLOYEES AS THEY ARE NOT COVERED BY AND HAVE NO RIGHTS UNDER THE COLLECTIVE AGREEMENT.
- 11. Mr. J. R. Henderson, Examiner, is authorized to inquire into and report to the Board on the duties and responsibilities of N. Lemiski, J. E. McIlroy, F. O. Jones and D. C. Worth.
- 12. THE APPLICATION, AS IT RELATES TO THE ENGINEERS-IN-TRAINING LISTED IN SCHEDULE A TO THE APPLICATION, IS DISMISSED.

### INDEXED ENDORSEMENTS - SECTION 79A

11076-65-M: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (TRADE UNION) V. UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION (EMPLOYER).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: S. A. Schiff, A. Collins, V. Massarotto and A. Burigana for the trade union, R. D. Perkins and D. Tintinalli for the EMPLOYER.

DECISION OF THE BOARD: (JANUARY 18, 1966.)

- 1. This is a reference by the Minister pursuant to section 79a of the Act. The question for determination by the Board is whether a collective agreement dated May 13th, 1965 is in operation between the trade union and the employer by virtue of which the request for the appointment of a conciliation officer is untimely.
- 2. By Letter dated January 13th, 1965, the trade union (hereinafter referred to as Local 117) gave notice to the employer (hereinafter referred to as the Association) of its desire to bargain for the renewal of the collective agreement in effect between them, the expiry date of which was April 30th, 1965. The bargaining committees of the Association and Local 117 met on Febraury 4th, 11th, 19th and April 22nd in the offices of Local 117 for the purpose of negotiating a new collective agreement. The bargaining committee for the Association which attended all four meetings consisted of Donald Tintinalli the chairman of the Association, tow other officers of the Association and one or two directors of the Association. The bargaining committee for Local 117 which attended all four meetings was composed of Charles Irvine, a Vice-President of the International Association of Operative Plasterers and Cement Masons, W. K. Clements, the business manager of Local 117, A. Collins, the financial secretary of Local 117, and two or three other members of Local 117. Irvine was chairman of the union bargaining committee.

AT ALL OF THE NEGOTIATING SESSIONS THE ONLY TOPICS DISCUSSED WERE WAGES, VACATION PAY AND THE DURATION OF THE COLLECTIVE AGREEMENT. AT THE CONCLUSTION OF THE MEETING OF THE BARGAINING COMMITTEES ON APRIL 22ND NO AGREEMENT HAD BEEN REACHED AND NO FURTHER MEETINGS WERE ARRANGED BETWEEN THE PARTIES.

- 3. Some time early in May of 1965, Irvine communicated with Tintinalli and arranged a further meeting on May 25th at the offices of the Association. Prior to that meeting, however, there was a membership meeting of Local 117 on May 18th. At that meeting Irvine informed the membership that he had received the Last offer from the Association. Irvine said that the offer was a two year agreement with a 15¢ an hour increase on May 1st, 1965, a further 15¢ an hour increase on May 1st, 1966 and an increase in vacation pay to 4 per cent as of July 1st, 1965. (No such offer, in fact, had been made to Irvine by the Association). The membership agreed to accept these terms. On that occasion Irvine did not inform the membership of Local 117 of the meeting that he had arranged with the Association on May 25th.
- 4. At the meeting on May 25th the Association was represented by its usual bargaining committee but Irvine was the only person present representing Local 117. Irvine informed the Association bargaining committee that Local 117 would not accept less than a two year agreement with a 15¢ an hour increase on May 1st, 1965, a further 15¢ an hour increase on May 1st, 1966 and a vacation pay increase from 2 to 4 per cent as of July 1st, 1965. At that point Irvine produced four copies of a memorandum on his own stationery as Vice-President of the International Association which read as follows:

## MAY 13TH 1965.

IT IS AGREED BY THE SIGNATURES BELOW OF THE DIRECTOR'S OF THE UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION, ON BEHALF OF THEIR MEMBERS (NAMES ATTACHED) THAT THEY WILL PAY ALL PLASTERERS IN THEIR EMPLOY EFFECTIVE MAY 1ST. 1965 \$3.15 PER HOUR. EFFECTIVE MAY 1ST. 1966 \$3.30 PER HOUR. IT IS ALSO AGREED THAT THE VACATION PAY RATE WILL BE 4% OF GROSS EARNINGS, EFFECTIVE JULY 1ST. 1965.

IRVINE ALSO PRODUCED FOUR COPIES OF A SECOND PAGE OF HIS OWN STATIONERY WHICH LISTED THE MEMBERS OF THE ASSOCIATION. THE ASSOCIATION BARGAINING COMMITTEE INFORMED IRVINE THAT IT WOULD ACCEPT THE TERMS OF HIS OFFER EXCEPT THAT THE ASSOCIATION WAS ONLY PREPARED TO GIVE A  $10 \rlap/$  an hour increase on May 1st, 1965. IRVINE THEN PROPOSED THAT THE ASSOCIATION GRANT A  $15 \rlap/$  an hour increase as of May 1st, 1965 but in return the check off of union dues paid by the employers as provided in the previous collective agreement would be reduced from  $5 \rlap/$  to  $3 \rlap/$  and the supplementary unemployment benefit fund contribution paid by the employers would be reduced from  $8 \rlap/$  to  $5 \rlap/$  . The Association bargaining committee accepted the revised terms as proposed by Irvine.

5. TINTINALLI THEN PRODUCED A NUMBER OF COPIES OF THE PREVIOUS COLLECTIVE AGREEMENT BETWEEN THE PARTIES WHICH EXPIRED ON APRIL 30TH, 1965. THESE COPIES WERE NOT DATED OR EXECUTED BY REPRESENTATIVES OF THE PARTIES. TINTINALLI GAVE TWO OF THE "BLANK" COPIES OF THAT DOCUMENT TO IRVINE AND TINTINALLI AND EACH MEMBER OF THE ASSOCIATION BARGAINING COMMITTEE HAD ONE

COPY OF THE DOCUMENT. THE MEMBERS OF THE ASSOCIATION BARGAINING COMMITTEE AND IRVINE PROCEEDED TO GO THROUGH EACH OF THE PROVISIONS OF THE PREVIOUS COLLECTIVE AGREEMENT AND MADE CHANGES IN THE DURATION, TERMINATION AND WAGE CLAUSES OF THE PREVIOUS AGREEMENT IN ACCORDANCE WITH THE UNDERSTANDING THAT HAD JUST BEEN REACHED BETWEEN THE ASSOCIATION AND IRVINE. MORE PARTICULARLY, TINTINALLI, ON HIS "BLANK" COPY OF THE PREVIOUS AGREEMENT, MADE CHANGES IN HIS OWN HANDWRITING IN "PEN AND INK" IN THE DURATION CLAUSE TO SHOW THE EXPIRY DATE AS APRIL 30TH, 1967 AND HE INSERTED THE SAME DATE IN THE TERMINATION CLAUSE. TINTINALLI ALSO CHANGED THE WAGE RATE OF \$3.00 AN HOUR SHOWN IN THE PREVIOUS AGREEMENT TO "\$3.15--1 May/65" AND "\$3.30--1 May/66". HE FURTHER ALTERED THE PROVISION DEALING WITH CHECK OFF OF UNION DUES AND SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION SO THAT THE FACE OF THE DOCUMENT INDICATES, ALTHOUGH NOT WITH ENTIRE CLARITY, THAT THESE AMOUNTS ARE REDUCED FROM 5¢ TO 3¢ AND 8¢ TO 5¢ RESPECTIVELY, AND THAT THE VACATION PAY IS INCREASED FROM 2 PER CENT TO 4 PER CENT.

- 6. HAVING CONSIDERED ALL OF THE TERMS OF THE PREVIOUS COLLECTIVE AGREE-MENT EACH OF THE MEMBERS OF THE ASSOCIATION BARGAINING COMMITTEE AND IRVINE PLACED THEIR SIGNATURES UPON THE FIRST PAGE OF THE MEMORANDUM PREPARED BY IRVINE DATED MAY 13TH, 1965 QUOTED IN PARAGRAPH 4. TINTINALLI THEREUPON STAPLED AN EXECUTED COPY OF THIS PAGE TOGETHER WITH THE SECOND PAGE LISTING THE MEMBERS OF THE ASSOCIATION TO THE COPY OF THE PREVIOUS COLLECTIVE AGREE-MENT IN WHICH HE HAD MADE THE "PEN AND INK" CHANGES REFERRED TO ABOVE. HE ALSO STAPLED ANOTHER EXECUTED COPY OF IRVINE'S TWO-PAGE MEMORANDUM TO A "BLANK" COPY OF THE PREVIOUS COLLECTIVE AGREEMENT. NO "PEN AND INK" CHANGES APPEAR IN THIS COPY OF THE COLLECTIVE AGREEMENT. TINTINALLI TESTIFIED THAT IRVINE ALSO ATTACHED TWO EXECUTED COPIES OF HIS MEMORANDUM OF MAY 13TH AND THE ACCOMPANYING LIST OF ASSOCIATION MEMBERS TO TWO COPIES OF THE "BLANK" COLLECTIVE AGREEMENT IN HIS POSSESSION. TINTINALLI DID NOT SEE WHAT "PEN AND INK" CHANGES IRVINE HAD MADE IN HIS COPIES OF THE PREVIOUS COLLECTIVE AGREEMENT. IRVINE THEN LEFT THE MEETING TAKING WITH HIM HIS TWO COPIES OF THE STAPLED DOCUMENT. NO REFERENCE WHATEVER WAS MADE TO ANY RATIFICATION OF THE AGREEMENT BY THE MEMBERSHIP OF LOCAL 117. ALTHOUGH TINTINALLI DID NOT APPEAR TO BE ENTIRELY CERTAIN HE TESTIFIED THAT IRVINE TELEPHONE HIM WITHIN A FEW DAYS AND SAID THAT THE MEMBERS OF LOCAL 117 HAD APPROVED THE AGREEMENT. (THE AGREEMENT, IN FACT, HAD NOT BEEN APPROVED BY THE MEMBERSHIP OF LOCAL 117 DURING THE INTERVENING PERIOD).
- WITHIN A FEW DAYS OF THE MAY 25TH MEETING TINTINALLI INFORMED THE MEMBERS OF THEASSOCIATION OF THE AGREEMENT REACHED WITH IRVINE AND DIRECTED THEM TO COMPLY WITH THE TERMS THEREOF RETROACTIVE TO MAY 1ST, 1965. TOWARDS THE END OF MAY, A. COLLINS, THE FINANCIAL SECRETARY OF LOCAL 117, RECEIVED IN THE MAIL FROM IRVINE A SINGLE COPY OF HIS MEMORANDUM OF MAY 13TH BEARING HIS SIGNATURE AND THOSE OF THE ASSOCIATION BARGAINING COMMITTEE MEMBERS. SOME TIME LATE IN JUNE COLLINS RECEIVED FROM IRVINE STENCILS OF A COLLECTIVE AGREEMENT WHICH INCORPORATED THE CHANGES AGREED UPON BY THE ASSOCIATION AND IRVINE AT THE MEETING ON MAY 25TH INCLUDING THE DEDUCTION IN THE AMOUNT OF CHECK OFF AND THE SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION PAID BY THE EMPLOYERS. THE NEXT REGULAR MEETING OF LOCAL 117 FOLLOWING COLLINS'S RECEIPT OF THE STENCILLED COLLECTIVE AGREEMENT TOOK PLACE ON JULY 13TH. AT THAT MEETING MEMBERS OF LOCAL 117 ASKED IRVINE FOR AN EXPLANATION OF THE AGREEMENT WHICH HE HAD NEGOTIATED ON MAY 25TH INCLUDING THE CHANGES IN THE CHECK OFF OF DUES AND THE SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION.

IRVINE OUTLINED THE TERMS OF THE AGREEMENT HE HAD NEGOTIATED BUT STATED THAT SINCE THE AGREEMENT HAD NOT BEEN SIGNED BY ANY OF THE OFFICERS OF LOCAL 117 IT WAS NOT A BINDING CONTRACT AND THAT ACCORDINGLY THE MEMBERSHIP COULD ACCEPT OR REJECT THE AGREEMENT. BY A STANDING VOTE THE AGREEMENT WAS REJECTED BY THE MEMBERSHIP. AT A FURTHER SPECIAL GENERAL MEETING OF LOCAL 117 HELD ON JULY 18TH THE MEMBERSHIP FORMALLY REJECTED THE AGREEMENT NEGOTIATED BY IRVINE IN A SECRET BALLOT VOTE. ON JULY 22ND TINTINALLI AND OTHER MEMBERS OF THE ASSOCIATION MET WITH OFFICERS AND REPRESENTATIVES OF LOCAL 117. AT THAT MEETING THE OFFICERS OF LOCAL 117 INFORMED THE ASSOCIAT-ION THAT THEY WERE NOT SATISFIED WITH THE TERMS OF THE AGREEMENT SIGNED BY IRVINE AND THAT IRVINE HAD NOT BEEN AUTHORIZED TO EXECUTE A COLLECTIVE AGREE-MENT ON BEHALF OF LOCAL 117 AND THAT ACCORDINGLY THE AGREEMENT WAS NOT BINDING UPON THE UNION. THE OFFICERS OF LOCAL 117 AGAIN REITERATED THEIR POSITION WITH RESPECT TO THE AGREEMENT EXECUTED BY IRVINE AT A MEETING WITH MEMBERS OF THE ASSOCIATION ON SEPTEMBER 29TH. ON BOTH THESE OCCASIONS THE ASSOCIATION TOOK THE POSITION THAT A VALID COLLECTIVE AGREEMENT HAD BEEN EXECUTED BY IRVINE WHICH AS BINDING ON LOCAL 117. LOCAL 117 THEREUPON MADE APPLICATION TO THE MINISTER TO APPOINT A CONCILIATION OFFICER ON OCTOBER 19TH, 1965.

- Counsel for Local 117 SUBMITS THAT THE FORM OF THE PURPORTED COLLECT-IVE AGREEMENT EXECUTED BY IRVINE AND THE ASSOCIATION DOES NOT MEET THE REQUIREMENTS OF A COLLECTIVE AGREEMENT AS DEFINED IN SECTION  $\mathbf{1}(\mathbf{1})(\mathbf{c})$  OF THE LABOUR RELATIONS ACT AND, THEREFORE, IS A NULLITY. THE EVIDENCE THAT THE TERMS OF THE STENCILLED FORM OF COLLECTIVE AGREEMENT PROVIDED BY IRVINE TO COLLINS WAS THE SAME AS THE TERMS OF THE DOCUMENT FILED WITH THE BOARD AS Exhibit #2, which bears the "pen and ink" changes made by Tintinalli, makes IT CLEAR THAT THERE WAS A COMPLETE MEETING OF MINDS BETWEEN INVINE AND THE ASSOCIATION BARGAINING COMMITTEE ON THE NEW AGREEMENT BETWEEN THEM. FURTHER, WHILE IRVINE'S MEMORANDUM OF MAY 13TH, 1965 DOES NOT BY REFERENCE INCORPORATE THE ATTACHED PREVIOUS COLLECTIVE AGREEMENT, THE "PEN AND INK" AMENDMENTS TO THE AGREEMENT INCORPORATE ALL OF THE TERMS AND CONDITIONS OF EMPLOYMENT SET OUT IN THE MEMORANDUM. ALSO, WHILE THE MEMORANDUM OF MAY 13TH DOES NOT REFER TO LOCAL 117 AS BEING A PARTY TO THE AGREEMENT, LOCAL 117 APPEARS AS ONE OF THE PARTIES TO THE ATTACHED COLLECTIVE AGREEMENT AS AMENDED. FINALLY, HAVING REGARD TO THE EVIDENCE RELATING TO THE MANNER IN WHICH THE MEMORANDUM AND THE AGREEMENT WERE STAPLED TOGETHER, WE ARE SATISFIED THAT THE SIGNATURES THAT APPEAR ON THE MEMORANDUM ARE IN EXECUTION OF THE WHOLE DOCUMENT. AS THE BOARD HAS STATED IN PREVIOUS DECISIONS, A COLLECTIVE AGREEMENT NEED NOT BE A FORMAL AGREEMENT; SO LONG AS THE INTENT OF THE PARTIES INDICATES THAT A DOCUMENT EMBODIES THE TERMS WHICH ARE TO GOVERN THEIR RELATIONSHIP, THE BOARD HAS BEEN MOST RELUCTANT TO HOLD THAT SUCH A DOCUMENT IS NOT A COLLECTIVE AGREEMENT. (See Foundation Company of Canada Case (1957) CCH Canadian Labour Law Reporter, TRANSFER BINDER 1955-1959, 416,078, (1957) C.L.S. 76-555; BEACH FOUNDRY CASE (1945) D.L.S. 7-1201). IF IT WAS NECESSARY FOR THE BOARD TO BE CONCERNED WITH THE FORM OF THE DOCUMENT EXECUTED BY IRVINE AND THE ASSOCIATION, FILED AS EXHIBIT #2, WE WOULD BE PREPARED TO FIND THAT IT COMPLIES WITH THE DEFINITION OF A COLLECTIVE AGREEMENT AS DEFINED IN SECTION  $\mathbb{1}(\mathbb{1})(\mathfrak{c})$  OF THE LABOUR RELATIONS ACT.
- 9. Counsel for Local 117 further argues that Irvine, in fact, did not have the Authority to sign a collective agreement on behalf of Local 117. There is nothing in the constitution of the Operative Plasterers' and Cement Masons' International Association which gives authority to a Vice-President to execute

A COLLECTIVE AGREEMENT WHICH IS BINDING ON A LOCAL OF THE INTERNATIONAL ASSOCIATION. FURTHER, THE EVIDENCE IS THAT, WHILE IRVINE WAS THE CHAIRMAN OF THE BARGAINING COMMITTEE OF LOCAL 117, AT NO TIME DID THE MEMBERSHIP OF THE LOCAL BY RESOLUTION OR OTHERWISE AUTHORIZE IRVINE TO NEGOTIATE OR EXECUTE A COLLECTIVE AGREEMENT BY HIMSELF ON THEIR BEHALF. WHILE THE APPROVAL OF THE MEMBERSHIP OF MAY 18TH, 1965 TO THE FINAL OFFER OF THE ASSOCIATION AS ALLEGED BY IRVINE MIGHT BE INTERPRETED AS GIVING IRVINE AUTHORITY TO EXECUTE A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117 IN THE TERMS APPROVED AT THE MEETING, THE BOARD FINDS THAT IRVINE DID NOT HAVE ACTUAL AUTHORITY TO BIND LOCAL 117 TO THE COLLECTIVE AGREEMENT WHICH HE ENTERED INTO WITH THE ASSOCIATION.

- 10. While the Board finds that Irvine did not in fact have the authority to sign a collective agreement which was binding on Local 117 and although he did not claim in so many words that he had such authority, on all the evidence relating to his conduct at the meeting with the Association bargaining committee on May 25th, we are satisfied that Irvine did hold himself out as having authority to sign a collective agreement on behalf of Local 117. The Question remains, however, as to whether the Association was entitled to rely on Irvine's ostensible authority.
- 11. IN ORDER TO MAKE A DETERMINATION ON THIS QUESTION, THE BOARD HAS CONSIDERED THE ENTIRE COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE PARTIES WHICH GOES BACK TO 1957. DURING THE INTERVENING PERIOD OF EIGHT YEARS, LOCAL 117 AND THE ASSOCIATION ENTERED INTO FOUR COLLECTIVE AGREEMENTS PRIOR TO NEGOTIATIONS FOR THE COLLECTIVE AGREEMENT IN DISPUTE. IN THE NEGOTIATION OF ALL FOUR AGREEMENTS INVINE WAS THE CHAIRMAN OF THE UNION BARGAINING COMMITTEE AS HE WAS IN THE MOST RECENT NEGOTIATIONS. IN ALL OF THE EARLIER NEGOTIATIONS BOTH COLLINS, CLEMENTS AND TWO OR THREE OTHER MEMBERS OF LOCAL 117 HAD BEEN ON THE UNION NEGOTIATING COMMITTEE AS IN THE MOST CURRENT NEGOTIATIONS. THE WHOLE OF THE BARGAINING COMMITTEE OF LOCAL 117 WAS PRESENT, HOWEVER, AT ALL OF THE NEGOTIATION MEETINGS INCLUDING THOSE AT WHICH THE COLLECTIVE AGREEMENTS WERE EXECUTED BY THE PARTIES. FURTHER, OFFICERS OF LOCAL 117 AND MOST OFTEN COLLINS AND CLEMENTS EXECUTED ALL OF THE PREVIOUS COLLECTIVE AGREEMENTS ON BEHALF OF LOCAL 117. WHILE THERE IS VIVA VOCE EVIDENCE THAT IRVINE WAS ALSO A SIGNATORY TO AT LEAST ONE OF THE EARLIER AGREEMENTS, THE DOCUMENTARY EVIDENCE ON FILE DOES NOT SUPPORT THIS TESTIMONY. (WE WOULD MENTION, HOWEVER, THAT AN ORIGINAL EXECUTED COPY OF THE AGREEMENT WHICH EXPIRED ON APRIL 30TH. 1965 WAS NOT FILED WITH THE BOARD). IN OTHER WORDS, THE ONLY MEETING IN THE COURSE OF THE NEGOTIATION OF FOUR COLLECTIVE AGREEMENTS AND INCLUDING THE MOST CURRENT NEGOTIATIONS, AT WHICH THE WHOLE OF THE UNION BARGAINING COMMITTEE WAS NOT IN ATTENDANCE, WAS THE MEETING OF MAY 25TH. MOREOVER, IT APPEARS THAT IRVINE HAS NEVER BEEN A SIGNATORY TO ANY OF THE PREVIOUS COLLECTIVE AGREEMENTS OR AT BEST HE WAS A SIGNATORY ON ONE OCCASION, BUT HE SIGNED TOGETHER WITH OFFICERS OF LOCAL 117.
- 12. Having regard to the entire history of the bargaining relationship between the parties, we fail to appreciate why the Association bargaining committee was prepared, without question, to accept that Irvine had authority to sign a collective agreement on behalf of Local 117 which was binding on its members. This is particularly so when one considers that Irvine announced to the Association bargaining committee the minimum demands of Local 117 and then promptly proceeded to negotiate and sign a collective agreement for less. Surely when Irvine agreed at the meeting to new terms, which had not been the

SUBJECT MATTER OF NEGOTIATION AT ANY OF THE PREVIOUS FOUR MEETINS OF THE BARGAINING COMMITTEE AND WHICH DECREASED THE FRINGE BENEFITS WHICH THE LOCAL HAD PREVIOUSLY ENJOYED, IT WAS INCUMBENT UPON THE ASSOCIATION TO QUESTION IRVINE'S AUTHORITY TO EXECUTE AN AGREEMENT FOR LOCAL 117 BASED ON THESE NEW TERMS. THE ASSOCIATION, HOWEVER, AT NOTTIME DURING THE MEETING OF MAY 25TH QUESTIONED OR REQUIRED PROOF OF IRVINE'S AUTHORITY TO NEGOTIATE THE ABOVE CHANGES TO THE COLLECTIVE AGREEMENT NOR DID IT MAKE ANY INQUIRY AS TO WHETHER IT WAS NECESSARY FOR THE MEMBERSHIP OF LOCAL 117 TO RATIFY THE AGREEMENT. IF, AND AS IT APPEARS, DESPITE ALL THE UNUSUAL CIRCUMSTANCES, THE ASSOCIATION BARGAINING COMMITTEE BELIEVED IRVINE HAD AUTHORITY TO SIGN AN AGREEMENT FOR LOCAL 117, IN OUR VIEW, SUCH BELIEF WAS WHOLLY UNWARRANTED. THE BOARD ACCORDLINGLY FINDS THAT THE ASSOCIATION WAS NOT ENTITLED TO RELY ON THE OSTENSIBLE AUTHORITY OF IRVINE TO SIGN A COLLECTIVE AGREEMENT ON BEHALF OF LOCAL 117 AND THAT THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED MAY 13TH, 1965 IS NOT BINDING ON LOCAL 117.

- 13. WE WISH TO EMPHASIZE THAT NOTHING STATED IN OUR DECISON IS TO BE INTER-PRETED AS CONDONING IN ANY WAY THE CONDUCT OF IRVINE. THE EVIDENCE MAKES IT CLEAR THAT IRVINE INTENTIONALLY PRACTISED DECEIT ON BOTH THE MEMBERSHIP OF LOCAL 117 AND THE ASSOCIATION BARGAINING COMMITTEE.
- 14. THE ANSWER OF THE BOARD TO THE QUESTION IN THE REFERENCE FROM THE MINISTER, THEREFORE, IS THAT THE APPLICATION FOR CONCILIATION SERVICES MADE BY LOCAL 117 IS TIMELY.

11113-65-M: International Hod Carriers' Building & Common Labourers Union of America, Local Union 697 (Trade Union) v. Taylor Woodrow Installations Limited (Employer).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. W. Forgie appearing for the trade union, and F. G. Pumple appearing for the employer.

DECISION OF: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE. (JANUARY 6, 1966.)

This is a reference to the Board by the Minister of Labour, pursuant to section 79a of the Act, of the Question whether timely notice to bargain was given by the trade union to the employer pursuant to section 40 of the Act.

A collective agreement was entered into between the employer and the trade union on June 22, 1964. Article XVI of that agreement provides as follows:

THE CONTRACTOR AND THE UNION AGREE ONE WITH THE OTHER THAT THEY WILL ABIDE BY THE ARTICLES OF THIS AGREEMENT FROM: JUNE 22ND, 1964 TO JUNE 22ND, 1965 INCLUSIVE, AND FROM YEAR TO YEAR THEREAFTER, UNLESS EITHER PARTY DESIRES TO CHANGE THIS AGREEMENT, IN WHICH CASE THE PARTY DESIRING TO CHANGE SHALL NOTIFY THE OTHER PARTY IN WRITING AT LEAST SIXTY (60) PRIOR TO JUNE 22ND, 1965, THAT SUCH IS ITS' DESIRE.

The evidence is that on April 15, 1965, (which was within the period defined in the collective agreement when timely notice of desire to change the agreement could be given), the trade union caused a letter containing the provisions of such a notice to be sent by registered mail to the employer. The evidence is further, that such a letter was not received by the employer. The trade union made no enquiries, either of the Post Office or of the employer, regarding the delivery or otherwise of the Letter, nor did it make any attempt to communicate further with the employer until the application for conciliation services was made on September 25, 1965, some six months after the mailing of the notice.

SECTION 85(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGH HER MAJESTY'S MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED, TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE ORDINARY COURSE OF MAIL.

IN THE INSTANT CASE, THE UNCHALLENGED EVIDENCE IS THAT THE LETTER IN QUESTION WAS NOT RECEIVED BY THE ADDRESSEE. THUS THE PRESUMPTION PROVIDED FOR BY SECTION 85 CANNOT BE RELIED ON BY THE TRADE UNION. THE COLLECTIVE AGREEMENT MAKES NO SPECIAL PROVISION AS TO THE MANNER IN WHICH NOTICE MAY BE GIVEN.

HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD CONCLUDES THAT THE TRADE UNION HAS NOT COMPLIED WITH THE REQUIREMENT OF THE COLLECTIVE AGREEMENT THAT A PARTY DESIRING TO CHANGE THE COLLECTIVE AGREEMENT "SHALL NOTIFY" THE OTHER PARTY WITHIN THE TIME SPECIFIED IN THE AGREEMENT.

The answer to the question referred to the Board by the Minister is "no".

DECISON OF: BOARD MEMBER G. RUSSELL HARVEY. (JANUARY 6, 1966.)

I dissent. The applicant union placed in evidence a copy of Post Office Registration Receipt 8665 dated April 15, 1965, and identified the Name of the Respondent Thereon.

THE RESPONDENT ORALLY DENIED RECEIPT OF NOTICE.

SECTION 85(1) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGHT HER MAJESTY S MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED, TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE ORDINARY COURSE OF MAIL.

(EMPHASIS ADDED).

IN VIEW OF THE SPECIFIC LANGUAGE OF THE ACT AND WITHOUT SEEKING TO GIVE A LIBERAL INTERPRETATION TO THE STATUTE, I CANNOT FIND THE RESPONDENT'S VIVE VOCE DENIAL CONSTITUTES PROOF OF ITS CLAIM.

IN THESE CIRCUMSTANCES I FIND A REGISTERED LETTER MUST BE PRESUMED TO HAVE BEEN RECEIVED BY THE RESPONDENT AND THAT NOTICE WAS GIVEN WITHIN THE SPECIFIED PERIOD.

11254-65-M: International Union of Operating Engineers, contracting by its Local 796 (Trade Union) v. King-Yonge-Yarmon Leasehold Partnership (Employer).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. MCDERMOTT.

APPEARANCES AT THE BEARING: J. PARKER AND W. WALKER FOR THE TRADE UNION, AND NO ONE APPEARING FOR THE EMPLOYER.

DECISION OF THE BOARD: (JANUARY 25, 1966.)

This is a reference to the Board by the Minister of Labour, pursuant to section 79a of the Act, of the question whether the trade union has given the employer timely notice of desire to bargain for a new collective agreement pursuant to section 40 of the Act.

THE COLLECTIVE AGREEMENT MADE BETWEEN THE PARTIES CONTAINS THE PROVISION THAT IT SHALL CONTINUE IN FORCE AND EFFECT UNTIL THE 14TH DAY OF November, 1965, and that "- - - IT SHALL CONTINUE FROM YEAR TO YEAR UNLESS EITHER PARTY THERETO GIVES THE OTHER AT LEAST 60 DAYS WRITEEN NOTICE OF TERMINATION AS OF THE FOLLOWING 14TH DAY OF NOVEMBER NEXT ENSUING". THE AGREEMENT WAS EFFECTIVE AS OF THE 14TH DAY OF NOVEMBER, 1964. BY THE PROVISION THAT THE AGREEMENT SHALL CONTINUE IN FORCE AND EFFECT UNTIL THE 14th day of November, 1965, it is made clear that the agreement was to be an AGREEMENT FOR A TERM OF ONE YEAR SUBJECT TO CONTINUATION IF NO NOTICE OF TERMINATION WERE GIVEN. SOME DIFFICULTY ARISES, IN THAT ON A LITERAL READING OF THE WORDS QUOTED, THERE IS NO PROVISION FOR THE GIVING OF SUCH NOTICE IN THE FIRST YEAR OF THE AGREEMENT. THE REQUIREMENT BEING THAT NOTICE BE GIVEN "AS OF THE FOLLOWING 14TH DAY OF NOVEMBER NEXT ENSUING". THE QUESTION OF THE DURATION AND TERMINATION OF THE COLLECTIVE AGREEMENT IS NOT WITHOUT AMBIGUITY AND IT MAY BE THAT THE AGREEMENT SHOULD BE READ AS PROVIDING FOR THE GIVING OF NOTICE AT LEAST 60 DAYS BEFORE THE 14TH OF NOVEMBER IN ANY YEAR.

ON SEPTEMBER 14th, 1965, THE TRADE UNION SENT TO THE EMPLOYER BY REGISTERED MAIL A NOTICE OF DESIRE TO BARGAIN WITH A VIEW TO RENEWAL OF THE COLLECTIVE AGREEMENT. THIS LETTER, IF DELIVERED ON SEPTEMBER 15th, WOULD ... HAVE GIVEN THE EMPLOYER ONLY 59 DAYS NOTICE OF THE TRADE UNION'S DESIRE TO BARGAIN. THE EMPLOYER, HOWEVER, REPLIED TO THIS NOTICE BY LETTER, DATED SEPTEMBER 20th, RAISING NO OBJECTION TO ITS TIMELINESS AND REQUESTING A POSTPONEMENT OF NEGOTIATIONS ON GROUNDS OF CONVENIENCE. ULTIMATELY TWO MEETINGS WERE HELD BETWEEN THE PARTIES, AT WHICH COLLECTIVE BARGAINING MEGOTIATIONS TOOK PLACE. THE EVIDENCE BEFORE THE BOARD IS THAT NO OBJECTION WAS TAKEN BY THE EMPLOYER AS TO THE EFFECTIVENESS OF THE NOTICE GIVEN OR THE PROPRIETY OF NEGOTIATIONS AT THAT TIME. AFTER THE SECOND MEETING, HOWEVER, THE EMPLOYER TOOK OBJECTION TO THE TIMELINESS OF THE NOTICE AND HAS OBJECTED ON THAT GROUND TO THE GRANTING OF CONCILIATION SERVICES. IT MAY BE NOTED THAT THE EMPLOYER, ALTHOUGH SERVED WITH NOTICE OF THESE PROCEEDINGS, DID NOT SEE FIT TO APPEAR AT THE HEARING OF THIS MATTER.

HAVING REGARD TO THE FOREGOING, IT IS CLEAR THAT, EVEN IF IT IS ASSUMED THAT TIMELY NOTICE WAS NOT GIVEN, THE PARTIES HAVE MET AND BARGAINED, AND THE MINISTER MAY, PURSUANT TO SECTION 13(2) OF THE ACT, APPOINT A CONCILIATION OFFICER.

IN RESPONSE TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER, THE BOARD DECLARES THAT THE TRADE UNION AND THE EMPLOYER HAVE MET AND BARGAINED WITHOUT OBJECTION TAKEN, AND THAT THE PROVISIONS OF SECTION 13(2) OF THE ACT ARE APPLICABLE IN THESE CIRCUMSTANCES.

## INDEXED ENDORSEMENTS - REQUEST FOR CONSIDERATION

10906-65-R: United Steelworkers of America (Applicant) v. Essex Wire Corporation Limited (Respondent) v. Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union 141 (Intervener).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. STOREY AND P. DALEY FOR THE APPLICANT, J. V. CUFF FOR THE RESPONDENT, J. NELLIGAN AND W. W. TILLER FOR THE INTERVENER.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER D. McDERMOTT: (JANUARY 20, 1966.)

- 1. THE BOARD AT A HEARING ON JANUARY 13TH, 1966 ENTERTAINED THE REPRESENTATIONS OF THE PARTIES ON THE REQUEST OF THE INTERVENER THAT THE BOARD RECONSIDER ITS DECISION IN THIS MATTER DATED DECEMBER 29TH, 1965.
- Counsel for the intervener in support of his request for reconsideration made the collowing submission. The application for certification of the applicant and the collateral question as to whether the collective agreement entered into by the respondent and the intervener is a bar to the application are separate issues. Before the Board can proceed with the certification application it is necessary for it to make a determination on the collateral issue, namely, the validity of the collective agreement. Only if the Board finds that the collective agreement between the respondent and the intervener is invalid and, therefore, not a bar, can the Board consider the merits of the application for certification. Since the Board did not make any decision with respect to the collective agreement it could not consider the build-up in the employment force of the respondent or direct the taking of a representation vote in order to determine the rights of the applicant in its certification application.
- 3. WITH REFERENCE TO THE COLLATERAL ISSUE, COUNSEL FOR THE INTERVENER MADE THE FOLLOWING SUBMISSION. BY VIRTUE OF THE WORDING OF SECTION 45A(1) THE BOARD CAN ONLY CONSIDER THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT COVERED BY THE AGREEMENT AS OF THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES. THE FACT OF A BUILD-UP IN THE WORK FORCE OF THE RESPONDENT SUBSEQUENT TO THAT DATE CAN HAVE NO BEARING ON THE INTERVENER'S ENTITLEMENT TO REPRESENT THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT. SINCE ON SEPTEMBER 24TH, 1965, THE DATE ON WHICH THE AGREEMENT CAME INTO EFFECT, ELEVEN OF THE FIFTEEN EMPLOYEES OF THE RESPONDENT WERE MEMBERS OF THE INTERVENER, THE

INTERVENER HAS ESTABLISHED ITS RIGHT TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT. THE BOARD, THEREFORE, EXCEEDED ITS JURISDICTION UNDER SECTION 45A IN DIRECTING THE TAKING OF A REPRESENTATION VOTE. IN ANY EVENT, THE RESULT OF THE VOTE CANNOT ASSIST THE BOARD IN DETERMINING THE RIGHT OF THE INTERVENER. TO REPRESENT THE EMPLOYEES OF THE RESPONDENT AS THE ONLY RELEVANT DATE IS THE DATE ON WHICH THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES.

- 4. WE WOULD FIRST OF ALL DEAL WITH THE LAST ARGUMENT MADE BY COUNSEL FOR THE INTERVENER. HE ASSERTS THAT THE RESULT OF THE REPRESENTATION VOTE TAKEN AFTER THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE RESPONDENT AND THE INTERVENER CANNOT ASSIST THE BOARD IN DETERMINING THE RIGHT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. YET WE NOTE THAT SECTION 45a(2) SPECIFICALLY PROVIDES THAT THE BOARD MAY HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE BEFORE DISPOSING OF THE ISSUE OF THE INTERVENER'S ENTITLEMENT TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. OBVIOUSLY, SUCH VOTES COULD ONLY BE TAKEN AFTER ANY COLLECTIVE AGREEMENT WHICH IS CHALLENGED UNDER SECTION 45a(1) HAD COME INTO EFFECT. IF THE BOARD WERE TO ACCEPT THE ARGUMENT OF COUNSEL FOR THE INTERVENER THE PROVISION IN SECTION 45a(2) PERMITTING THE BOARD TO CONDUCT REPRESENTATION VOTES COULD HAVE NO POSSIBLE APPLICATION.
- 5. While the Board agrees with counsel for the respondent that the application for certification of the applicant and the collateral question as to whether the collective agreement is a bar to the application are separate issues, the Board cannot accept the argument of the intervener that the collateral issue must be determined before the Board can even consider the merits of the certification application. Section 45a(1) reads as follows:

WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

IN OUR VIEW, THE OPERATIVE WORDS OF THE SUBSECTION ARE — "THE BOARD MAY . . . DECLARE THAT THE TRADE UNION WAS NOT . . . ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAININGUNIT". ACCORDINGLY, WHEN THERE IS EVIDENCE OF A PLANNED BUILD-UP IN THE WORK FORCE OF THE RESPONDENT THE BOARD, PURSUANT TO SECTION 45A(1), CAN TAKE COGNIZANCE OF THE BUILD-UP IN DETERMINING THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT. IN OTHER WORDS, THE BOARD CAN CONSIDER THE BUILD-UP IN THE WORK FORCE OF THE RESPONDENT AND CAN EMPLOY THE SUBSEQUENTLY ACQUIRED EVIDENCE RELATING TO THE BUILD-UP IN DECIDING WHETHER AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE RESPONDENT AND THE INTERVENER WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. WE DO NOT ACCEPT COUNSEL FOR THE INTERVENER'S ARGUMENT THAT THE WORDS OF THE SUBSECTION — "AT THE TIME THE AGREEMENT WAS ENTERED INTO" — MUST BE INTERPRETED TO MEAN THAT THE BOARD CANNOT CONSIDER ANY EVENTS THAT OCCUR AFTER THE COLLECTIVE AGREEMENT WAS

ENTERED INTO IN DETERMINING THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. IN OUR OPINION, SUCH AN INTERPRETATION IS WHOLLY INCONSISTENT WITH THE INTENTION AND CONTEXT OF THE ENTIRE SECTION.

- 6. It is clear that the very purpose for which section 45a was enacted is to ensure that the employees of an employer are represented by a bargaining agent of their choice. In the instant case, while the intervener had in membership a majority of the employees employed by the respondent on September 24th, 1965 there were only fifteen employees employed by the respondent on that date. At the hearing of the Board on January 13th, however, the representative of the respondent informed the Board that there were approximately 183 employees in the employ of the respondent as of the end of the first week of January, 1966. We find it difficult to believe that it was intended by the Legislature that the evidence of membership shown by the intervener for eleven employees entitles it to an automatic right to represent no less and probably more than 183 employees.
- IN A CERTIFICATION APPLICATION WHERE THERE IS EVIDENCE OF A PLANNED BUILD-UP IN THE WORK FORCE OF THE RESPONDENT EMPLOYER, EVEN THOUGH THE APPLICANT TRADE UNION MAY HAVE EVIDENCE OF MEMBERSHIP FOR MORE THAN FITY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD DOES NOT GRANT OUTRIGHT CERTIFICATION. RATHER, THE BOARD IN PAST DECISIONS HAS HELD THAT DESPITE THE EVIDENCE OF MEMBERSHIP FOR OVER FIFTY-FIVE PER CENT OF THE BARGAINING UNIT EMPLOYEES AS OF THE DATE OF THE APPLICATION, THE APPLICANT IS ONLY ENTITLED TO A REPRESENTATION VOTE TO BE TAKEN WHEN A REPRESENTATIVE WORK FORCE IS IN THE EMPLOY OF THE RESPONDENT. THE BOARD SEES NO REASON TO TREAT A COLLECTIVE AGREEMENT ENTERED INTO IN THE FACE OF A BUILD-UP IN THE WORK FORCE OF THE RESPONDENT IN ANY DIFFERENT MANNER. ACCORDINGLY, A TRADE UNION THAT IS PARTY TO A COLLECTIVE AGREEMENT EXECUTED IN THE ABOVE CIRCUMSTANCES, ALTHOUGH IT HAS MEMBERSHIP FOR A MAJORITY OF THE EMPLOYEES OF THE EMPLOYER ON THE EFFECTIVE DATE OF THE AGREEMENT, IS ENTITLED TO NO MORE THAN A REPRESENTATION VOTE TO BE TAKEN WHEN THE EMPLOYER HAS HIRED A REPRESENTATIVE WORK FORCE. STATED IN ANOTHER WAY, WHERE THERE IS A BUILD-UP SITUATION, THE DATE OF THE MAKING OF AN APPLIC-ATION FOR CERTIFICATION OR THE DATE OF THE SIGNING OF A COLLECTIVE AGREEMENT FOLLOWING VOLUNTARY RECOGNITION BY AN EMPLOYER IS NOT THE ONLY RELEVANT DATE IN DETERMINING WHETHER A TRADE UNION IS ENTITLED TO REPRESENT BARGAINING UNIT EMPLOYEES OF THE EMPLOYER. JUST AS RELEVANT IS THE DATE ON WHICH THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE.
- 8. IN THE INSTANT CASE, FOR THE ABOVE REASONS, THE BOARD FOUND THAT BOTH THE APPLICANT AND THE INTERVENER WERE ENTITLED TO HAVE THEIR NAMES PLACED ON THE SAME BALLOT FOR A REPRESENTATION VOTE TO BE HELD AT A TIME IN THE FUTURE TO BE DETERMINED BY THE BOARD.
- 9. THE BOARD ACCORDINGLY REAFFIRMS ITS DECISION DATED DECEMBER 29TH, 1965.
  DECISION OF BOARD MEMBER H. F. IRWIN: (JANUARY 20. 1966.)

I DISSENT.

IN ITS DECISION DATED DECEMBER 29th, 1965, THE BOARD HELD THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS ENTERED INTO PREMATURELY BECAUSE OF THE EVIDENCE PERTAINING TO THE ANTICIPATED

BUILD-UP IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT SUBSEQUENT TO THE TIME THE AGREEMENT WAS ENTERED INTO.

IN ADJUDICATING THE REQUEST OF THE INTERVENER THAT THE BOARD RECONSIDER ITS DECISION IN THIS MATTER, THE REAL ISSUE IS THE INTERPRETATION OF THE WORDS "ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO" AS SET OUT IN SECTION 45A SUBSECTION (3): -

(3) On an application under subsection 1, the onus of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rests on the parties to the agreement.

(EMPHASIS ADDED)

THE WORDING OF SUBSECTION (3) IS CLEAR AND UNAMBIGUOUS. ACCORDINGLY, THE WORDS USED THEREIN MUST BE GIVEN THEIR NORMAL MEANING. THE BOARD USES SIMILAR WORDING IN ITS OFFICIAL ENDORSEMENTS IN RESPECT OF APPLICATIONS FOR CERTIFICATION. A TYPICAL ENDORSEMENT READS AS FOLLOWS:-

"THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FITY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE."

(EMPHASIS ADDED)

THE BOARD HAS STATED OVER AND OVER AGAIN THAT THE WORDS "AT THE TIME THE APPLICATION WAS MADE" ARE TO BE INTERPRETED AS REFERRING ONLY TO THOSE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE THE APPLICATION FOR CERTIFICATION WAS MADE (THAT IS, THE DATE ON WHICH IT IS FILED WITH THE BOARD) AND NO OTHERS. EMPLOYEES WHO ARE SUBSEQUENTLY HIRED BY THE RESPONDENT AND PLACED IN THE BARGAINING UNIT ARE NOT INCLUDED WITHIN THE SCOPE OF THE ABOVE QUOTED WORDS. TO BE CONSISTENT, THE BOARD MUST APPLY THE SAME INTERPRETATION TO THE RELEVANT WORDS IN SUBSECTION (3), THAT IS, THEY MEAN PRECISELY THOSE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO AND NO OTHERS.

ON AN APPLICATION FOR CERTIFICATION, THE BOARD ITSELF DOES NOT INITIATE AN ENQUIRY INTO ANY ANTICIPATED INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT THAT MAY SUBSEQUENTLY TAKE PLACE. IT ONLY CONSIDERS THIS ISSUE WHEN RAISED BY ONE OF THE PARTIES TO THE PROCEEDING. AT THE TIME THE AGREEMENT WAS ENTERED INTO IN THE INSTANT CASE, NEITHER THE RESPONDENT, THE INTERVENER, THE EMPLOYEES OR THE APPLICANT UNION RAISED THIS ISSUE.

The respondent and the intervener union have proved conclusively that 11 out of the 15 employees, or more than 73% of the employees in the bargaining unit at the time the agreement was entered into, were members of the said union. Moreover, a majority of these employees ratified the agreement at a meeting duly called by the union for that purpose on the date the agreement was signed.

IT IS ABUNDANTLY CLEAR, THEREFORE, THAT THE INTERVENER UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. THEREFORE, THE PARTIES TO THE AGREEMENT HAVE FULLY DISCHARGED THE ONUS UPON THEM AS PRESCRIBED BY THE PROVISIONS OF SUBSECTION (3) OF SECTION 45A OF THE ACT. THE SAID PARTIES HAVING MET THE REQUIREMENTS OF THE PRESCRIBED ONUS, IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD MUST FIND THAT (1) THE INTERVENER UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO AND (2) THAT THE SAID AGREEMENT IS A VALID ONE. IT FOLLOWS, THEN, THAT THE APPLICATION OF THE APPLICATION OF THE APPLICATION 5 OF SECTION 5 OF THE ACT AND MUST BE DISMISSED.

FOR THE ABOVE REASONS, I WOULD HAVE REVOKED THE BOARD'S DECISION DATED DECEMBER 29TH, 1965, ORDERING A REPRESENTATION VOTE AND DISMISS THE APPLICATION FOR CERTIFICATION FILED BY THE APPLICANT UNION.

11098-65-R: DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members E. Boyer and R. W. Teagle.

DECISION OF THE BOARD: (JANUARY 27, 1966.)

- 1. THE APPLICANT WAS CERTIFIED BY THE BOARD ON DECEMBER 23rd, 1965.
- 2. On January 18th, 1966, the Board received a document, dated January 15th, 1966, purporting to be signed by four employees of the respondent and containing inter alia the following wording, "We feel possibly that we can accomplish as much by continuing to bargain on our own behalf and therefor request our certification by the Department of Labour to have the Mine Workers Union who have made application to act as our bargaining agent be withdrawn."
- 3. The letter makes no reference to any section of the Act under which the relief sought might be available. If, however, the request is treated as an application for termination of bargaining rights, it should be examined in the light of the provisions of sections 43(1), 45(1) and (2). These sections read as follows:
  - 43.--(1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.
  - 45.--(1) IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION OR IF IT FAILS TO GIVE NOTICE UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

- (2) WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF THE NOTICE OR, AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING
- 4. In view of the fact that certification was granted as late as December 23rd, 1965 it hardly seems necessary to observe that the provisions of section 43(1) have no application in these circumstances.
- 5. It is equally obvious that no relief is available to employees under the terms of section 45(1) or 45(2) since the sixty days' period referred to in each subsection has not yet elapsed.
- 6. On the other hand, if the letter be treated as a request under section 79(1) that the Board reconsider its decision of December 23, 1965, it must be denied for the reasons given in the case of Permanent Transit-Mix Concrete Limited, D.L.S. 76-644.
- 7. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF THE OPINION THAT THE EMPLOYEE APPLICANTS HAVE FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE REQUEST IS ACCORDINGLY DENIED.
- 11121-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. PERCHUK LUMBER (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (JANUARY 6, 1966.)

- 1. ON NOVEMBER 23, 1965, THE APPLICANT APPLIED TO THE BOARD FOR CERTIFICATION UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE LABOUR RELATIONS ACT FOR ALL EMPLOYEES OF THE RESPONDENT WORKING IN A DEFINED AREA IN NORTHWESTERN ONTARIO. AS A RESULT OF STATEMENTS MADE IN THE APPLICATION AND REPLY, IT APPEARED TO THE BOARD THAT QUESTIONS WOULD ARISE CONCERNING THE APPLICATION OF THE CONSTRUCTION INDUSTRY PROVISIONS TO THE CASE AND, FURTHER, AS TO THE EMPLOYMENT STATUS OF CERTAIN PERSONS AFFECTED BY THE APPLICATION. ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE MATTERS AND TO REPORT TO THE BOARD THEREON.
- 2. Before the examiner could arrange his meetings, the Board received a letter from the applicant enclosing "Agreements signed between Perchuk Lumber and the United Brotherhood of Carpenters and Joiners of America, Local Union 1669 and Lumber and Sawmill Workers Local Union 2693, Port Arthur, Ontario". These agreements were entered into on December 8, 1965, the day the

BOARD ENDORSED THE RECORD, APPOINTING AN EXAMINER. THE LETTER FROM THE APPLICANT REQUESTED "LEAVE OF THE BOARD TO WITHDRAW OUR APPLICATION FOR CERTIFICATION ON PERCHUK LUMBER FOR REASONS THAT THE UNIT APPLIED FOR IS ALREADY COVERED BY THE ENCLOSED AGREEMENTS".

3. ON DECEMBER 13, 1965, IN ACCORDANCE WITH ITS USUAL PRACTICE!IN SUCH CASES, THE BOARD FURTHER ENDORSED THE RECORD IN THIS MATTER AS FOLLOWS:

COLLECTIVE AGREEMENTS DATED DECEMBER 8TH, 1965 BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 AND BETWEEN THE RESPONDENT AND LUMBER & SAWMILL WORKERS UNION LOCAL 2693, THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA HAVE BEEN FILED WITH THE BOARD.

IN THESE CIRCUMSTANCES THERE IS NO NEED TO PROCESS
THE APPLICATION FURTHER AND THE PROCEEDINGS ARE ACCORDINGLY
TERMINATED.

4. BY LETTER DATED DECEMBER 16, 1965, THE RESPONDENT'S SOLICITORS INFORMED THE BOARD THAT FOR PURPOSES OF THE RECORD THE RESPONDENT WAS TAKING THE POSITION THAT THERE WERE "NO VALID COLLECTIVE AGREEMENTS IN FORCE THAT ARE BINDING UPON THE RESPONDENT". IN A LETTER DATED DECEMBER 28, 1965, THE SOLICITORS FOR THE APPLICANT STATED:

THE LETTER FROM THE SOLICITORS REPRESENTING PERCHUK LUMBER WOULD INDICATE THAT THEY DESIRE TO HAVE AN ADJUDICATION ON THE VALIDITY OF THE SHORT FORM AGREEMENT EXECUTED ON DECEMBER 8TH, 1965. PLEASE BE ADVISED THAT WE HAVE NO OBJECTION TO HAVING THE BOARD EXERCISE ITS DISCRETION UNDER SECTION 79 TO RE-OPEN THE MATTER AND CONDUCT A FULL INQUIRY AS TO THE VALIDITY OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES.

BY LETTER DATED DECEMBER 31, 1965, THE RESPONDENT'S SOLICITORS INFORMED THE BOARD THAT

THE RESPONDENT HAS NO OBJECTION TO HAVING THE BOARD INQUIRE INTO THE VALIDITY OF THE ALLEGED COLLECTIVE AGREEMENTS BETWEEN THE ABOVE MENTIONED PARTIES AS A MATTER COLLATERAL TO THE INITIAL APPLICATION FOR CERTIFICATION.

A CAREFUL CONSIDERATION OF THE MATERIALS BEFORE US FAILS TO DISCLOSE IN ANY SATISFACTORY MANNER WHICH PARTY IS SEEKING RELIEF, THAT IS, WHICH PARTY WOULD HAVE THE CARRIAGE OF A RE-OPENING OF THE CASE. EACH PARTY SEEMS TO BE TAKING THE POSITION THAT THE OTHER IS SEEKING THE RELIEF. FURTHERMORE, IT APPEARS THAT EACH PARTY HAS SIGNED DOCUMENTS WHICH ON THEIR FACE CONSITUTE COLLECTIVE AGREEMENTS. IF A PARTY SIGNING THESE "AGREEMENTS" IS ENTITLED TO QUESTION THEIR VALIDITY (AND AGAIN WE MAKE NO DETERMINATION ON THIS POINT) THE PROPER TIME TO DO SO, IN OUR VIEW, IS WHEN THE OTHER PARTY SEEKS TO ENFORCE THEM. IN SUCH CIRCUMSTANCES THE PROCEDURE AVAILABLE TO THE PARTY SEEKING ENFORCEMENT MAY DEPEND ON THE NATURE OF THE DISPUTE AND ON THE CONTENT OF THE "AGREEMENTS" IN QUESTION. IN OTHER WORDS, THE AGREEMENTS

MAY PROVIDE FOR A METHOD OF DETERMINING THE DISPUTE OR, ALTERNATIVELY, THERE MAY BE OTHER REMEDIES AVAILBALE UNDER THE LABOUR RELATIONS ACT. AGAIN, THE BOARD IS NOT CLEAR JUST WHAT THE ISSUE IS BETWEEN THE PARTIES. THE APPLICANT APPEARS TO THINK IT HAS SOMETHING TO DO WITH THE FORM OF THE AGREEMENT, WHILE THE RESPONDENT SPEAKS IN TERMS OF VAGUE GENERALITIES.

ANOTHER QUESTION THAT ARISES IS WHAT WOULD FOLLOW FROM A BOARD DETERMINATION? THE PROCEEDINGS HAVE BEEN TERMINATED FOLLOWING A REQUEST FOR LEAVE TO WITHDRAW THE CERTIFICATION APPLICATION. IN THESE CIRCUMSTANCES, EVEN IF WE WERE TO FIND THAT THE DOCUMENTS ARE NOT "COLLECTIVE AGREEMENTS" WE NOT PERSUADED THAT WE OUGHT TO RENINSTATE THE CERTIFICATION PROCEEDINGS.

6. Having regard to the above considerations and assuming that this is a matter which falls within section 79(1) of the Act (and we express no opinion on this one way or the other) the Board does not consider it advisable to reconsider its decision of December 13, 1965.

## STATISTICAL TABLES FOR JANUARY 1966

## TABLE |

## APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

			Numbe	R FILED
		JANUARY 1ST 1966		FISCAL YEAR 1964-65
. 1	CERTIFICATION	72	817	779
11.	DECLARATION TERMINATING BARGAINING RIGHTS	3	50	74
111.	Declaration of Successor Status	7	24	4
IV.	Declaration that Strike Unlawful	4	46	35
٧.	Declaration that Locak- Out Unlawful		4	5
VI.	CONSENT TO PROSECUTE	4	83	64
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT	r	0.0	300
	(SECTION 65)	7	90	133
VIII.	MISCELLANEOUS	6	45	23
	TOTAL	103	1159	1117

TABLE 11
HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
		10 MTHS OF 1965-66	FISCAL YEAR 1964-65
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	80	980	955

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

			Nимв	ER DISPOSED OF
		JANUARY 15		F FISCAL YR.
		1966	1965-66	1964-65
1.	CERTIFICATION	65	826	767
11.	DECLARATION TERMINATING BARGAINING RIGHTS	1	53	77
111.	DECLARATION OF SUCCESSOR STATUS	9	19	6
1 / •	Declaration That Strike Unlawful	3	43	35
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	_	4	5
V1.	Consent to Prosecute	1	75	64
VII.	Complaint of Unfair Practice in Employment (Section 65)	6	5	151
VIII.	MISCELLANEOUS	3	95	25
	TOTAL	===	1120	1819

TABLE IV

## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### BY TYPE AND DISPOSITION

		Number	OF APPLI	CATIONS	Number	OF EMPLOYE	EES*
		JANUARY 1 1966		\$ FISCAL YR. 1964-65	JANUARY 1 1966	st 10 Mths 1965-66	FISCAL YR. 1964-65
۱.	CERTIFICATIO	<u>N</u>					
	GRANTED DISMISSED WITHDRAWN	44 17 4	611 144 71	565 133 69	1852 17807 51	16690 26251 3412	16692 6226 2422
	TOTAL	65	826	767 <del></del>	19710	46353	25340
11.	TERMINATION OF BARGAININ RIGHTS	<u>G</u>					
	Granted Dismissed Withdrawn	1 - -	25 25 3	47 28 2	141	1435 765 119	590 1140 82
	TOTAL	1	53	77	141	2319	1812

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

			Numbe	R OF APPLICA	ATIONS
			JANUARY	1st 10 Mths 1965-66	FISCAL YR.
111.	DECLARATION THAT	STRIKE			
	Granted Dismissed Withdrawn		- 3 -	7 4 32	13 5 17
		TOTAL	3 =	43 <del>=</del>	35
1 V •	DECLARATION THAT UNLAWFUL	Lockout			
	Granted Dismissed Withdrawn		-	<del>-</del> 4	1 1 3 - 5
		TOTAL		4	<u>5</u>
٧.	CONSENT TO PROSEC	UTE			
	Granted Dismissed Withdrawn		1	29 14 32	13 14 37
		TOTAL	1	75	64

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE ONTARIO LABOUR RELATIONS BOARD

			Number of V 1st 10 Mths 1965-66	FISCAL YR.
CERTIFICATION AFTER VOTE*				
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted		2 3	23 28	17 29
DISMISSED AFTER VOTE				
Pre-Hearing Vote Post-Hearing Vote Ballots Not Counted		6	6 32 3	8 48 -
	TOTAL	12	92	102

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

## TABLE VI

## REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE

## ONTARIO LABOUR RELATIONS BOARD

	Numbe	ER OF VOTES	
		1st 10 MTHs 1965-66	
*RESPONDENT UNION SUCCESSFUL	-	1	-
RESPONDENT UNION UNSUCCESSFUL	1	20	12
		Workspeeding	en-electrics
TOTAL	1	21	12
	Management of the Control of the Con		MARIE, COMMO

<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



## ONTARIO LABOUR RELATIONS BOARD



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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### DURING FEBRUARY 1966

#### BARGAINING AGENTS CERTIFIED DURING FEBRUARY

NO VOTE CONDUCTED

10992-65-R: United Textile Workers of America (Applicant) v. Blue Bell Canada Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (105 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 809).

11152-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION #880 (APPLICANT) v. BEAVER LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETROLIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

11191-65-R: THE FIRECO EMPLOYEES' ASSOCIATION (APPLICANT) v. FIRECO SALES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 813).

11257-65-R: International Union of Operating Engineers Local 796 (Applicant) v. Kemptville District Hospital (Respondent) v. Employee (Objector).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT KEMPTVILLE, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11268-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 457 (APPLICANT) V. ELLENZWEIG BAKERY LIMITED (RESPONDENT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (INTERVENER).

Unit: "ALL DRIVER SALESMEN OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (19 EMPLOYEES IN THE UNIT).

11283-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) v. PRESLAND IRON & STEEL LTD. (RESPONDENT) v. GROUP OF EMPLOYEES
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 817).

11287-65-R: General Truck Drivers Union, Local 938, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Powell Transport (Ontario) Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 818).

11291-65-R: Local Union 1590 of the International Brotherhood of Electrical Workers AFL-CIO-CLC (Applicant) v. Horn Elevator Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 50 THE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS." (103 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11296-65-R: International Union of Operating Engineers Local 796 (Applicant) v. University of Ottawa (Respondent).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT LOCATED AT 10 HASTEY STREET, OTTAWA, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11297-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Commisso Bros. & Racco Italian Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

11298-65-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. ITALIAN HOME BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

11300-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Tre Mari Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

11301-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Napoli Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11302-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Checchi D'Oro Bakery (Respondent)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

11303-65-R: BAKERY & CONFECTIONERY WORKERS! INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. PANE VITTORIA BAKERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SHIPPER, MAINTENANCE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11304-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Modern Home Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

11306-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Roma Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11308-65-R: BAKERY & CONFECTIONERY WORKERS! INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. VICENTINA BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11315-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT)
v. CENTRAL SUPERMARKETS LIMITED (SUDBURY 1.G.A. CARTIER STORE) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SUDBURY, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (58 EMPLOYEES IN THE UNIT).

11320-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. T. M. G. Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

11322-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. BOARD OF EDUCATION OF THE CITY OF OSHAWA (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL TEACHERS AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT).

11328-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Delman Manufacturing Ltd. (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

(79 EMPLOYEES IN THE UNIT).

11332-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. T. M. T. Contractors Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN PRICE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11329-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. PITNEY-BOWES OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND SERVICE STAFF, OFFICE STAFF AND PLANT GUARDS." (36 EMPLOYEES IN THE UNIT).

11331-65-R: Warehousemen and Miscellaneous Drivers Union, Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. McGraw-Hill Company of Canada Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

11333-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 1081 (Applicant) v. Droge Construction Limited (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMENT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11337-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC. (APPLICANT) v. BELLDAIRE MILK PRODUCTS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND DAIRY BAR EMPLOYEES."

(7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 818).

11341-65-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN LONDON, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGERS AND MEAT MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, ASSISTANT STORE MANAGER OR MEAT MANAGER, AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (20 EMPLOYEES IN THE UNIT).

11343-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE UNITED TOWNSHIPS OF DYSART, BRUTON, CLYDE, DUDLEY, GUILFORD, HARBURN, HARCOURT AND HAVELOCK (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE ROAD SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROAD SUPERINTENDENT, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

11344-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE UNITED TOWNSHIPS OF DYSART, BRUTON, CLYDE, DUDLEY, GUILFORD, HARBURN, HARCOURT AND HAVELOCK (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE CLERK-TREASURER, PERSONS ABOVE THE RANK OF CLERK-TREASURER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

11351-65-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION LOCAL 254 (APPLICANT) v. DIANA SWEETS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE COACH 'N FOUR DINING ROOM, STORE 68 AT THE DON MILLS SHOPPING CENTRE IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11352-65-R: BAKERY & CONFECTIONERY WORKERS! INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. LA RINASCENTE BAKERY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

11356-65-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. VERSAFOODS LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN ITS VENDING DIVISION EMPLOYED AT OR WORKING OUT OF HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

11358-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Carter Construction Company Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

11360-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Nu Style Construction Company (Respondent).

Unit: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN ELLIOT LAKE AND TOWNSHIP 149 AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ALL IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11366-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. LIBERTY BUILDING LIMITED (RESPONDENT).

Unit: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

11367-65-R: United Steelworkers of America (Applicant) v. Kent Steel Products Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (132 EMPLOYEES IN THE UNIT).

11368-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA A.F.L. C.I.O. C.L.C. (APPLICANT) v. Droge Construction Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11370-65-R: Woodstock Custodians Association (Applicant) v. The Board of Education for the City of Woodstock (Respondent) v. London and District Building Service Workers' Union, Local 220 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT BUSINESS ADMINISTRATOR, PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR, PROFESSIONAL TEACHING STAFF, OFFICE STAFF, CHIEF ENGINEER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (35 EMPLOYEES IN THE UNIT).

11380-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Tri-Span Construction Company Limited. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSINS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11398-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 493 (Applicant) v. Hill-Clark-Francis, Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11404-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Coady Store Fixtures & Equipment Co. Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11407-65-R: International Hod Carriers' Building and Common Labourers' Union of America (Applicant) v. C. Sansone Construction (Respondent).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MALBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11416-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 597 (Applicant) v. Chemong Const. Ltd. (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

## CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

11182-65-R: THE CANADIAN UNION OF CPERATING ENGINEERS LOCAL 101 (APPLICANT)
v. Johnson Matthey & Mallory Limited (Respondent) v. International Union of
Operating Engineers Local 796 (Intervener).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR
HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANTS IN
METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE
THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

Number of names of persons on voters¹ List 5

Number of persons who cast ballots 5

Number of ballots marked in favour of applicant 4

E2.7

NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER

1

(SEE INDEXED ENDORSEMENT PAGE 813).

## CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10916-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ELECTRONIC MATERIELS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, SUPERVISORS AND SECTION HEADS, PERSONS ABOVE THE RANK OF FOREMAN, SUPERVISOR AND SECTION HEAD, OFFICE AND SALES STAFF." (152 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST		96
NUMBER OF BALLOTS CAST		95
Number of ballots segregated and not counted	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64	
Number of Ballots marked against applicant	30	

10940-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. PEEL MEMORIAL HOSPITAL (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF THE RESPONDENT'S HOSPITAL AT BRAMPTON, SAVE AND EXCEPT THE CHIEF ENGINEER." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS'

11

NUMBER OF PERSONS WHO CAST BALLOTS

11

NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED

Number of Ballots Marked in Favour
OF APPLICANT

7

Number of Ballots Marked in Favour
OF Intervener

(SEE INDEXED ENDORSEMENT PAGE 807).

11249-65-R: Local 530 of the International Brotherhood of Electrical Workers A.F.L. - C.I.O. - C.L.C. (Applicant) v. Moore Municipal Telephone System (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN THE TOWNSHIPS OF MOORE, DAWN, SOMBRA AND ENNISKILLEN IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT FCREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE WORKERS AND TELEPHONE OPERATORS." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS' LIST 13

NUMBER OF BALLOTS CAST 13

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT 10

NUMBER OF BALLOTS MARKED AGAINST APPLICANT 3

## APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

## NO VOTE CONDUCTED

11280-65-R: International Association of Bridge, Structural and Ornamental Iron Workers Local Union #721 (Applicant) v. Chubb-Mosler and Taylor Safes Ltd. (Respondent) v. Local 678 International Chemical Workers Union (Intervener). (29 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 816).

11323-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. BOHN TILE COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

11347-65-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. B.II.C. LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (UBJECTORS). (44 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 819).

11353-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 (APPLICANT) v. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCLUDING MARLBOROUGH TOWNSHIP, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (40 IEMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 821 ).

11357-65-R: Local Union # 1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. Northern Flooring (Respondent) (3 employees)

(SEE INDEXED ENDORSEMENT PAGE 822 ).

11362-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O. C.L.C. (APPLICANT) v. THE KELVIN-THOMPSON COMPANY LIMITED (RESPONDENT) v. THE UNITED STEELWORKERS OF AMERICA (INTERVENER). (19 EMPLOYEES)

(SEE INDEXED ENDORSEMENT PAGE 822).

11364-65-R: Hotel & Restaurant Employees and Bartenders International Union, Restaurant, Cafeteria & Tavern Employees Union. Local 254 (Applicant) v. The Board of Education for the Township of Etobicoke (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF SCHOOL CAFETERIAS IN THE TOWNSHIP OF ÉTOBICOKE, SAVE AND EXCEPT CAFETERIA MANAGERS, PERSONS ABOVE THE RANK OF CAFETERIA MANAGER, OFFICE STAFF, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT).

THE APPLICANT SOUGHT A UNIT OF EMPLOYEES EMPLOYED AT SCARLETT HEIGHTS COLLEGIATE CAFETERIA — A COLLEGIATE WITHIN THE JURISDICTION OF THE RESPONDENT. THERE WERE ELEVEN COLLEGIATES AND TWO VOCATIONAL SCHOOLS IN THAT JURISDICTION OF WHICH TWELVE HAVE CAFETERIAS. THE RESPONDENT TOOK THE POSITION THAT THE BARGAINING UNIT SHOULD INCLUDE ALL EMPLOYEES ENGAGED IN THE OPERATION OF SCHOOL CAFETERIAS THROUGHOUT THE TOWNSHIP OF ETOBICOKE.

IN THE CASES OF SCHOOL BOARDS THE BOARD HAS INVARIABLY FOUND THAT ALL EMPLOYEES OF THE SCHOOL BOARD COMING WITHIN CERTAIN CLASSIFICATIONS CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND THERE APPEARED TO BE NO REASON FOR DEPARTING FROM THIS ESTABLISHED PATTERN IN THE PRESENT CASE.

11420-65-R: OPERATIVE PLASTERER'S AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 159 (APPLICANT) v. Culp Bros. Ltd. (RESPONDENT) v. BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL 12 (INTERVENER). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 823).

## CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

10430-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. THE CANADIAN CHROMALOX COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, DRAFTSMEN, LABORATORY TECHNICIANS, MODEL ROOM TECHNICIANS, SPECIFICATION WRITERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (267 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES ON REVISED VOTERS! LIS	ST 266
NUMBER OF BALLOTS CAST	267
NUMBER OF BALLOTS SPOILED	2
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	103
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	160

11294-65-R: Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees Local Union No. 352, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Delany & Pettit Industries Limited (Respondent).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (65 EMPLOYEES).

NUMBER OF NAMES ON REVISED VOTERS LIST	64
NUMBER OF BALLOTS CAST	64
Number of Ballots Marked in Favour of Applicant	22
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42

11127-65-R: THE HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 412 A.F. of L.,-C.I.O.,-C.L.C. (APPLICANT) v. ALGONQUIN HOTEL (SOO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ALGONQUIN HOTEL IN SAULT STE. MARIE, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES ON REVISED VOTERS! LIST		12
Number of ballots cast	12	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	7	

11181-65-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Coca-Cola Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, SPECIAL SALESMEN, PERSONS ABOVE THE RANK OF FOREMAN AND SPECIAL SALESMAN, AND OFFICE STAFF." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED  VOTERS <sup>†</sup> LIST	26
Number of Ballots Cast	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16

## APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

11334-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:C10:CLC (APPLICANT) v. METROPOLITAN DIOCESAN ROMAN CATHOLIC HIGH SCHOOL BOARD OF WINDSOR (RESPONDENT). (3 EMPLOYEES).

11363-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L. C.I.O. C.L.C. (APPLICANT) v. FALCON EQUIPMENT DISTRIBUTORS (RESPONDENT) (7 EMPLOYEES).

11405-65-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL. CIO. CLC (APPLICANT) v. TWEED VENEERS LTD. (RESPONDENT) v. TWEED VENEERS LIMITED SHOP UNION (INTERVENER) (39 EMPLOYEES).

11418-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. UNI-FORM BUILDERS LTD. (RESPONDENT). (15 EMPLOYEES).

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

### DURING FEBRUARY

11324-65-R: PAUL BRILLINGER (APPLICANT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 514 (RESPONDENT) v. GLOBELITE BATTERIES LIMITED (EASTERN DIVISION) (INTERVENER). (WITHDRAWN). (65 EMPLOYEES).

11339-65-R: ANGELO DALBELLO (APPLICANT) V. INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, LOCAL 28, AFL.CIC.CLC. (RESPONDENT) V. KENT STEEL PRODUCTS LTD. (INTERVENER). (WITHDRAWN). (67 EMPLOYEES).

11361-65-R: ANNE RESE, JOHN FARRUGIA AND GORDON PERRY (APPLICANTS) V.
INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (GRANTED) (130 EMPLOYEES).

(Re: Brunswick of Canada Ltd. Cooksville, Ontario.)

(SEE INDEXED ENDORSEMENT PAGE 824).

# APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING FEBRUARY

11236-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. DRYDEN 5¢ TO \$1.00 STORE LIMITED (RESPONDENT). (WITHDRAWN).

11237-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. RED & WHITE FOODLAND (RESPONDENT). (GRANTED).

11238-65-R: RETAIL CLERKS UNION LOCAL NO. 832 (APPLICANT) v. SHOP EASY STORES LIMITED (RESPONDENT). (GRANTED).

11239-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. SHOP-EASY STORES LIMITED (RESPONDENT). (GRANTED).

- 11240-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. SHOP-EASY STORES LIMITED (RESPONDENT). (GRANTED).
- 11241-65-R: RETAIL CLERKS UNION LOCAL NO. 832 (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT). (GRANTED).
- 11242-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT). (GRANTED).
- 11243-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. SHOP-EASY STORES LIMITED (RESPONDENT). (GRANTED).
- 11244-65-R: RETAIL CLERKS UNION LOCAL No. 832 (APPLICANT) v. CANADA SAFEWAY LIMITED (RESPONDENT). (GRANTED).

## APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING FEBRUARY

- 11349-65-U: THE OSHAWA TIMES, A DIVISION OF CANADIAN NEWSPAPERS LIMITED (APPLICANT) v. DAVID CLEMENTS ET AL (RESPONDENTS). (WITHDRAWN).
- 11350-65-U: THE OSHAWA TIMES, A DIVISION OF CANADIAN NEWSPAPERS LIMITED (APPLICANT) v. OSBORNE ALTON ET AL (RESPONDENTS). (WITHDRAWN).
- 11354-65-U: Men's Clothing Manufacturers Association of Ontario, and Ferth Bros. Limited (Applicants) v. Joseph Wilson O'Connor, William G. Turner, James Black, Daniel Demers, Lloyd Harrington, Pieter B. Van der Wel, Frank Mancini, Robert Draker, Alfred Arsenault, Bruno Molinaro, Gary Wade and Frank A Aquino (Respondents). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 825).

- 11382-65-U: RUSSELL-HIPWELL ENGINES LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).
- 11402-65-U: ELLIS-DON LIMITED (APPLICANT) v. PIETRO SCAFFIDI ET AL (RESPONDENTS).

### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

10640-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, A.F. OF L. -C.I.O. (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT). (WITHDRAWN).

11189-65-U: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. INSTRUMENTS (1951) LIMITED (RESPONDENT). (WITHDRAWN).

11190-65-U: International Union United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Applicant) v. Instruments (1951) Limited (Respondent). (WITHDRAWN).

11245-65-U: CANADIAN UNION OF FUBLIC EMPLOYEES (APPLICANT) v. CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 826).

11258-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 373 (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF NORTH YORK (RESPONDENT).

DECISION OF THE BOARD:

"IN GRANTING LEAVE TO INSTITUTE A PROSECUTION, THE BOARD SELDOM GIVES REASONS FOR ITS DECISION, BECAUSE OF THE DANGER THAT SUCH REASONS MIGHT BE INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE ALLEGATIONS MADE BY THE APPLICANT, WHETHER IT BE AS TO FACTS OR LAW. IN THE INSTANT CASE, THE FACTS ARE CLEAR. THE ISSUES RAISED BY COUNSEL IN THEIR ARGUMENTS. HOWEVER, INVOLVE AN ARGUABLE QUESTION OF LAW. THE BOARD THEREFORE CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT IN THIS MATTER FOR THE FOLLOWING OFFENCE OR OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

THAT THE RESPONDENT, BY A BY-LAW ENACTED ON THE 30TH DAY OF DECEMBER 1965, TO COME INTO FORCE ON JANUARY 1, 1966, ALTERED THE RATES OF WAGES, TERMS AND CONDITIONS OF EMPLOYMENT, RIGHTS AND PRIVILEGES OF THE APPLICANT AND THE EMPLOYEES OF THE RESPONDENT WITHOUT THE CONSENT OF THE APPLICANT AND CONTRARY TO SECTION 59(1) OF THE LABOUR RELATIONS ACT.

THE APPROPRIATE DOCUMENTS WILL ISSUE."

11316-65-U: SCM (CANADA) LIMITED (APPLICANT) V. UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA AND ITS LOCAL 514 (RESPONDENT). (WITHDRAWN).

11321-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 749 (APPLICANT)
v. THE CORPORATION OF THE TOWN OF PORT HOPE (RESPONDENT). (WITHDRAWN).

11355-65-U: Men's Clothing Manufacturers Association of Chtario, and Firth Bros. Limited (Applicants) v. Robert Draker, Gary Wade, Frank Mancini, James Black, Joseph W. O'Connor, William G. Turner, Alfred Arsenault, Daniel Demers, Frank A. Aquino, Bruno Molinaro, Peter Van Der Wel, Lloyd Harrington. (Respondents). (GRANTED).

11374-65-U: TORONTO NEWSPAPER GUILD, LOCAL 87, AMERICAN NEWSPAPER GUILD (APPLICANT) v. CANADIAN NEWSPAPERS LIMITED, COLIN McConechy, Robert D. Malcolmson, Omer Fontaine, Leslie Leith (Respondents). (WITHDRAWN).

11383-65-U: RUSSEL-HIPWELL ENGINES LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA AND A. SHEPPARD (RESPONDENT). (WITHDRAWN).

11384-65-U: RUSSEL-HIPWELL ENGINES LIMITED (APPLICANT) V. C. M. McMILLAN ET AL (RESPONDENTS). (WITHDRAWN).

### COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

#### DURING FEBRUARY

10868-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Ford Motor Company of Canada, Limited (Respondent).

10948-65-U: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. Eastwood Park Hotel and Robert Laurent (Respondents).

11000-65-U: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. Eastwood Park Hotel and Robert Laurent (Respondents).

(THE ABOVE MATTERS WERE CONSOLIDATED).

(REASONS TO BE ISSUED AT A LATER DATE).

11175-65-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AND LOCAL 641 (COMPLAINANT) V. ELECTRONIC MATERIELS OF CANADA LIMITED (RESPONDENT).

11310-65-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) v. COOPER-WEEKS LIMITED (RESPONDENT).

- 11311-65-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) v. SKENE CARTAGE COMPANY LIMITED (RESPONDENT).
- 11318-65-U: Canadian Brotherhood of Railway Transport and General Workers (Complainant) v. Skene Cartage Company Limited (Respondent).
- 11327-65-U: Warehousemen and Miscellaneous Drivers Union, Local 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. B.D.C. LTD. INC. SUBSIDIARY OF BANKERS DISPATCH CORP. (RESPONDENT).
- 11340-65-U: ORGANIZING DIVISION OF LOCAL UNION 46 UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) v. AUTOMATIC FUELS LIMITED, 122 BROCK AVENUE, TORONTO 3, UNTARIO (RESPONDENT).
- 11365-65-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) v. DIANA SWEETS LTD. (RESPONDENT).
- 11376-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. General Impact Extrusions Mfg. Limited (Respondent).
- 11381-65-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) v. SKENE CARTAGE COMPANY (RESPONDENT).
- 11396-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. General Impact Extrusions Mfg. Limited (Respondent).
- APPLICATION UNDER SECTION 66(6) (REVIEW OF INTERIM ORDER OR DIRECTION OF JURISDICTIONAL DISPUTES COMMISSION) DISPOSED OF DURING FEBRUARY
- 10709-65-M: Wood, Wire & Metal Lathers International Union, Local 97 (Complainant) v. Donaldson-Barron Company Ltd., and United Brotherhood of Carpenters, Local 1747 (Respondents).
- APPLICATION FOR DETERMINATION UNDER SECTION 79 DISPOSED OF DURING FEBRUARY
- 11226-65-M: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Ramsay Industries Limites (Respondent) v. Brotherhood of Painters, Decorators and Paperhangers of America, Glass Works Section Ottawa Local 200 (Intervener).

# REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF

#### DURING FEBRUARY

11325-65-M: General Truck Drivers Union, Local 938, (Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America) (Trade Union) v. Wm. Dalley Cartage Company Limited (Employer).

## APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

11329-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Pitney-Bowes of Canada Limited (Respondent) v. Group of Employees (Objectors), (REQUEST DENIED).

#### INDEXED ENDORSEMENTS - CERTIFICATION

10940-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. PEEL MEMORIAL HOSPITAL (RESPONDENT) AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

BEFORE: J. D. O'Shea, Deputy Vice-Chairman, and Board Members D. McDermott and R. W. Teagle.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT, G.G. SMITH AND A.L. POST FOR THE RESPONDENT, WM. WALKER FOR INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796, MARTIN LEVINSON AND H. WALKER FOR BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 204.

DECISION OF THE BOARD: (FEBRUARY 14, 1966)

- THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONSENT IN THE BARGAINING UNIT DESCRIBED BY THE BOARD IN ITEM 2 OF ITS DECISION DATED OCTOBER 29TH, 1965, CONSISTING OF ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF THE RESPONDENT'S HOSPITAL AT BRAMPTON, SAVE AND EXCEPT THE CHIEF ENGINEER.
- 2. As a result of a question which arose as to the eligibility of four persons to vote, the Board directed that the four persons, E. Monaghan, R. Masterson, W. Russell and H. Silverthorne, be permitted to vote and that their

BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY TO BE INCLUDED IN THE BARGAINING UNIT DESCRIBED BY THE BOARD IN ITS DECISION ABOVE REFERRED TO AND FURTHER DIRECTED THAT THE FOUR PERSONS BE EXAMINED IN ORDER TO DETERMINE THEIR DUTIES AND RESPONSIBILITIES.

- 3. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE BOARD DIRECTED THAT THIS MATTER BE LISTED FOR HEARING TO ENTERTAIN REPRESENTATIONS OF THE PARTIES ON THE MATTERS CONTAINED IN THE REPORT OF THE EXAMINER.
- 4. Having regard to the representations of the parties and to the evidence contained in the Examiner's report, including the evidence that Edward Monaban, a persons described by the respondent as assistant chief engineer, has eleven persons reporting to him, that he has hired two persons after having interviewed them, that he has disciplined employees by admonishing them, that he assigns work and supervises employees, that employees initially see him as the first step in the grievance procedure, the Board finds that Edward Monaghan exercises managerial functions within the meaning of section 1 (3) (b) of the Labour Relations Act and is not eligible for inclusion in the bargaining unit.
- 5. The parties agreed that Mr. Masterson, Mr. Russell and Mr. Silverthorne, were maintenance men employed at the hospital and were not persons primarily engaged as helpers in the boiler room of the respondent.
- 6. The parties further agreed that Building Service Employees' International Union Local 204 was certified for all employees at the respondent's hospital in 1957. Subsequently International Union of Operating Engineers Local 796 succeeded in Carving out its craft unit from the unit represented by Local 204 and the unit for which Local 796 was certified was in the terms of the unit described in Item 2 of the Board's decision of October 29th, 1965, in this matter.
- 7. THE PARTIES FURTHER AGREED THAT WHEN THE HOSPITAL WAS FIRST ESTABLISHED PERSONS PRIMARILY EMPLOYED AS HELPERS IN THE BOILER ROOM ALSO PERFORMED CERTAIN MAINTENANCE WORK AT THE HOSPITAL. HOWEVER, AS THE HOSPITAL EXPANDED A MAINTENANCE STAFF WAS HIRED WHO PERFORMED MAINTENANCE WORK ONLY AND WERE NOT PRIMARILY EMPLOYED AS HELPERS IN THE BOILER ROOM. WHEN SUCH MAINTENANCE PERSONNEL WERE EMPLOYED, THE RESPONDENT AGREED TO PERMIT THEM TO BE REPRESENTED BY LOCAL 796. However, Local 204 WAS NOT A PARTY TO SUCH AGREEMENT.
- 8. THE APPLICANT IN THIS MATTER APPLIED TO BE CERTIFIED FOR ITS USUAL CRAFT UNIT BUT NOW CLAIMS IT SHOULD ALSO HAVE THE RIGHT TO REPRESENT THE MAINTENANCE PERSONNEL WHO WERE REPRESENTED BY LOCAL 796 AT THE TIME THE APPLICATION WAS MADE.
- 9. Local 796 claimed to represent the maintenance personnel at the time the application was made because the respondent had voluntarily recognized Local 796 as the bargaining agent for such persons, however, there can be no

DOUBT THAT AT THE TIME THE RESPONDENT AGREED THAT LOCAL 796 REPRESENT SUCH EMPLOYEES, LOCAL 204 WAS ENTITLED BY REASON OF ITS CERTIFICATION TO REPRESENT THOSE EMPLOYEES AND ITS BARGAINING RIGHTS COULD NOT BE DESTROYED OR IMPAIRED BY THE UNILATERAL ACT OF THE RESPONDENT.

- 10. HAVING REGARD TO THE TERMS OF A RECENT COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND LOCAL 204 WHICH SPECIFICALLY COVERS MAINTENANCE EMPLOYEES, IT IS APPARENT THAT LOCAL 204 HAS NOT ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO SUCH PERSONS AND ACCORDINGLY IS STILL ENTITLED TO REPRESENT THEM.
- 11. THE BOARD THEREFORE FINDS THAT R. MASTERSON, W. RUSSELL AND H. SILVERTHORNE, THE MAINTENANCE PERSONNEL AT THE RESPONDENT'S HOSPITAL, ARE NOT PERSONS PRIMARILY ENGAGED AS HELPERS IN THE BOILER ROOM OF THE RESPONDENT AND ACCORDINGLY WERE NOT ENTITLED TO CAST A BALLOT IN THE REPRESENTATION VOTE DIRECTED IN THIS MATTER.

10992-65-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) v. BLUE BELL CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: Martin Levinson and W. Foley for the applicant, George S.P. Ferguson, Q.C., and D.W. Watt for the respondent.

DECISION OF J. D. O'SHEA, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER E. BOYER. (FEBRUARY 2, 1966).

- 1. This is an application for certification made in the name of United Textile Workers of America, Local 467 (Hereinafter Referred to as Local 467).
- 2. The application for certification (Form 1) was signed by Mr. William Foley, the Canadian Co-Director of United Textile Workers of America (Here-Inafter referred to as the International). Mr. Foley signed the Statement on Status of Trade Union (Form 8) and the Declaration Concerning Membership Documents (Form 9). In both these forms his position is indicated as Canadian Co-Director.
- 3. ALL OF THE MEMBERSHIP DOCUMENTS FILED IN SUPPORT OF THE APPLICATION
  WERE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS OF THE INTERNATIONAL.
- 4. Since Local 467 had never previously been recognized as a trade union within the meaning of section 1 (1) (J) of the Labour Relations Act, the Registrar, in an attempt by the Board to avoid undue delay or adjournments, advised the applicant by letter dated October 27th, 1965, that "you must be prepared at the hearing scheduled in this matter to satisfy the Board in accordance with its usual practice that your organization is a trade union within the meaning of section 1 (1) (J) of the Labour Relations Act."

- 5. ON November 1st, 1965, the day prior to the terminal date of this application, Mr. Foley requested the Board, by letter, to amend the name of the applicant in this matter by substituting the International for Local 467. Mr. Foley also filed at that time, on behalf of the International, a copy of Form 8 and a copy of Form 9 signed by him as Canadian Co-Director of the International.
- At the first hearing, on November 9th, 1965, the applicant moved the amendment requested in its letter of November 1st, 1965. The Board was advised that the formal documentation setting up local 467 had not bee completed and local 467 had nothing in writing to evidence its existence as a trade union on November 9th, 1965, and requested an opportunity to file the documents when received by it. Mr. Foley testified that he was informed by telephone by an officer of the International on October 18th, 1965, that #467 had been assigned to the Local. It was on the basis of this telephone conversation that Mr. Foley believed that Local 467 came into existence as a trade union on October 18th, 1965, and was eligible to make the application in this matter. However, Mr. Foley acknowledged that he held no office in local 467 and that no officers had been elected and no meetings of the membership had been held since the number was assigned.
- 7. THE REASON GIVEN BY MR. FOLEY FOR THE REQUEST TO AMEND THE NAME OF THE APPLICANT CONCERNED THE FACT THAT THE MEMBERSHIP EVIDENCE WAS IN THE NAME OF THE INTERNATIONAL RATHER THAN THE LOCAL. However, THE REQUEST WAS APPARENTLY PRECIPITATED BY THE REGISTRAR'S LETTER OF OCTOBER 27TH, 1965 WHICH DEALT WITH THE NECESSITY OF PRODUCING DOCUMENTARY EVIDENCE OF THE LOCAL'S EXISTENCE. THE BOARD RESERVED ITS DECISION ON THE MOTION.
- 8. Subsequent to the first hearing, the Board by its decision of November 22nd, 1965, determined that the Charter and a letter from the International President, which were both dated November 9th, 1965, and which were filed subsequent to the hearing by the Board of that date, would be admissable evidence.
- 9. A SECOND HEARING WAS HELD ON DECEMBER 22ND, 1965, TO PERMIT THE RESPONDENT AN OPPORTUNITY TO CROSS-EXAMINE MR. FOLEY ON THE EVIDENCE WHICH WAS FILED SUBSEQUENT TO THE HEARING.
- 10. PRIOR TO DEALING WITH THE MERITS OF THIS APPLICATION, THE BOARD IS FACED WITH TWO PRELIMINARY QUESTIONS. THE FIRST QUESTION TO BE ANSWERED IS "IS THE BOARD SATISFIED THAT LOCAL 467 is a trade union within the meaning of section 1 (1) (J)?". The second question is "Should the Board grant the motion to amend the name of the applicant?".
- 11. IT WOULD APPEAR FROM THE EVIDENCE IN THIS MATTER THAT WHILE A CHARTER WAS PREPARED AND ISSUED ON NOVEMBER 9TH, 1965, EFFECTIVE AS OF OCTOBER 18TH, 1965, ON THE DATE THIS APPLICATION WAS MADE AND FOR THAT MATTER, AS OF THE DATE OF THE SECOND HEARING IN THIS MATTER, NO MEETINGS OF MEMBERS OF LOCAL 467 HAD BEEN HELD AND NO OFFICERS HAD BEEN ELECTED. ON THE DATE THIS APPLICATION

WAS MADE, THERE WAS NO ORGANIZATION ESTABLISHED PURSUANT TO THE CHARTER WHICH HAD BEEN ISSUED BY THE INTERNATIONAL. ALL THAT WAS IN EXITENCE WAS SOMETHING WHICH MIGHT BE DESCRIBED AS A "PAPER LOCAL".

12. Having regard to the decision of the Board in the Abitibi Power & Paper Company Limited Case, Board File No. 10731-65-R, October 14th, 1965, the Board Finds that since no officers had been elected and no responsible officials had been appointed by the members of Local 467, Local 467 is not a viable entity which can be considered by the Board to be a trade union within the meaning of section 1 (1) (j) of the Labour Relations Act. In arriving at this decision the Board has noted the decision of the Canada Labour Relations Board, dated December 15th, 1965, in the Canadian Broadcasting Corporation Case, which reads in part as follows; an organization seeking certification as a trade union

"SHALL BE IN A POSITION TO SATISFY THE BOARD THAT IS IS A VIABLE TRADE UNION ORGANIZATION OPERATING UNDER A CONSTITUTION WHICH IS BINDING UPON ITS MEMBERS AND OFFICERS AND HAS DULY ELECTED OR APPOINTED OFFICERS OR OTHER AUTHORIZED PERSONS CLOTHED WITH AUTHORITY TO ACT ON BEHALF OF THE UNION AND BY WHOSE ACTS THE ORGANIZATION AND ITS MEMBERS MAY BE BOUND IN ACCORDANCE WITH THE PROVISIONS OF ITS CONSTITUTION OR BY-LAWS."

- 13. THE BOARD THEREFORE FINDS THAT AS OF THE DATE THIS APPLICATION WAS MADE LOCAL 467 WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
- 14. WE NOW MUST DEAL WITH THE MOTION TO AMEND THE NAME OF THE APPLICANT IN THIS MATTER BY SUBSTITUTING THE NAME OF THE INTERNATIONAL. THE BOARD'S JURISDICTION TO MAKE SUCH AN AMENDMENT IS FOUND IN SECTION 78 OF THE ACT WHICH READS AS FOLLOWS:
  - 78. "WHERE IN ANY PROCEEDINGS BEFORE THE BOARD THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PERSON OR TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR HAS BEEN INCORRECTLY NAMED, THE BOARD MAY ORDER THE PROPER PERSON OR TRADE UNION TO BE SUBSTITUTED OR ADDED AS A PARTY TO THE PROCEEDINGS OR TO BE CORRECTLY NAMED UPON SUCH TERMS AS APPEAR TO THE BOARD TO BE JUST."
- 15. Since it has been the long established practice of the Board to treat membership in the International as membership in a Local Union of the International, the Board must accordingly find that there was no mistake, bona fide or otherwise, with respect to the membership evidence which would justify the amendment sought.

- 16. However, at the time the application was made, and for that matter at the time of the second hearing in this matter, Mr. Foley was of opinion that Local 467 was a trade union within the meaning of section 1 (1) (J) of the Act which would be recognized by the Board. In this, Mr. Foley was mistaken. The Board is satisfied that this mistake of Mr. Foley is a bona fide mistake. To decide otherwise, the Board would have to find that Mr. Foley deliberately applied in the name of Local 467 with the knowledge that the Board would find that Local 467 was not a trade union within the meaning of section 1 (1) (J) of the Act. While we might find that the manner in which the International assigns and issues Charters is not in accordance with the Degree of care one would normally expect, we do find that in assigning the Charter to Local 467 no attempt was made to mislead anyone or to deliberately create confusion. However, Mr. Foley believed that Local 467, once having a Charter assigned by the International, could apply for Certification.
- 17. THE BOARD ACCORDINGLY IS SATISFIED THAT MR. FOLEY MADE A BONA FIDE MISTAKE WITHIN THE MEANING OF SECTION 78 OF THE ACT, WITH THE RESULT THAT THE PROPER TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR IN ALL THE CIRCUMSTANCES OF THIS CASE THE APPLICANT HAS BEEN INCORRECTLY NAMED.
- 18. THEREFORE, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 78 OF THE ACT AMENDS THE NAME OF THE APPLICANT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION BY SUBSTITUTING THEREFOR "United Textile Workers of America".
- 19. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
  - 20. The Board further finds that all employees of the respondent at Renfrew, save and except foremen, foreladies, persons above the ranks of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.
  - 21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: (FEBRUARY 2, 1966).

| DISSENT.

1. While I agree with the decision of the Board that as of the date this application was made, the United Textile Workers of America, Local 467 (the Applicant) was not a trade union within the meaning of Section 1 (1) (J) of

THE LABOUR RELATIONS ACT, I DISAGREE WITH MY COLLEAGUES IN THAT PORTION OF THE DECISION OF THE BOARD GRANTING THE MOTION TO AMEND.

- 2. THE PURPOSE OF SECTION 78 OF THE ACT WAS TO PERMIT AMENDMENTS TO THE STYLE OF CAUSE IN ANY PROCEEDINGS BEFORE THE BOARD WHERE THE PARTY SEEKING THE AMENDMENT HAS FOUND AN ERROR IN NOMENCLATURE OR OTHER BONA FIDE MISTAKE. IN GRANTING THE MOTION TO AMEND THE BOARD IS THEN ALLOWING SECTION 78 OF THE ACT TO BE USED SO AS TO PERMIT ONE ENTITY TO BE SUBSTITUTED FOR ANOTHER, AND THIS IN MY OPINION IS IMPROPER. SECTION 78 WAS NOT INTENDED TO BE USED AS AN "ALTERNATIVE" REMEDY.
- 3. IN CONSIDERING SUCH A MOTION, THE BOARD MUST HAVE AS A THRESHOLD CONDITION AN ADMISSION OF THE MISTAKE. IN THE CASE BEFORE THE BOARD, THE ALLEGED MISTAKE INVOLVING EVIDENCE OF MEMBERSHIP WITH WHICH THE APPLICANT WAS CONCERNED, WAS DISPELLED WHEN THE BOARD EXPLAINED TO THE APPLICANT THE BOARD'S PRACTICE WHEREBY IT TREATS MEMBERSHIP IN THE INTERNATIONAL AS MEMBERSHIP IN A LOCAL UNION OF THE INTERNATIONAL. THIS WAS DONE AT THE ONSET OF THE FIRST HEARING, AND THE APPLICANT PROCEEDED TO ADDUCE WHAT EVIDENCE IT HAD AVAILABLE AT THE TIME AS TO ITS STATUS.
- 4. If the Board permits Section 78 of the Act to be used as an "Alternative" argument, the whole process of meeting the Board's requirements as to evidence of status becomes a sham. These requirements are not onerous and an applicant must be prepared to adduce evidence to show that it is indeed a viable entity which can be considered by the Board to be a trade union with officers and spokesmen properly authorized to negotiate, and execute a collective agreement on behalf of the employees it has sought to represent. Careless-NESS in these proceedings must be at the peril of the applicant.
- 5. Having found that the Applicant was not a trade union within the meaning of the Act, I would have denied, what must be treated as an "alternative" pleading. The request to amend the name of one entity by substituting the name of another entity is improper and I would have accordingly dismissed the application.

11182-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. JOHNSON MATTHEW & MALLORY LIMITED (RESPONDENT) AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT, P. L. BARKER AND P. H. BRYSON FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD: (JANUARY 31, 1966).

1. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER, THE BOARD DIRECTED THE REGISTRAR TO LIST THIS MATTER FOR HEARING ON ALL OUTSTANDING ISSUES INCLUDING THE DESCRIPTION OF THE BARGAINING UNIT AND THE TIMELINESS OF THIS APPLICATION.

- 2. THE INTERVENER, BY LETTER DATED JANUARY 7th, 1966, WITHDREW ITS OBJECTION CONCERNING THE TIMELINESS OF THIS APPLICATION.
- 3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
- 4. THE BOARD DETERMINES THAT ALL STATIONARY ENGINEERS AND PERSONS
  PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE
  RESPONDENT AT ITS PLANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF
  ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF
  EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 5. IN DETERMINING THE ABOVE BARGAINING UNIT TO BE APPROPRIATE, THE BOARD HAS TAKEN THE FOLLOWING FACTS INTO CONSIDERATION. THE INTERVENER AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING ALL ENGINEERS.

  ARTICLE 1 OF THIS COLLECTIVE AGREEMENT READS IN PART AS FOLLOWS:

"THE UNION AGREES TO CO-OPERATE WITH THE EMPLOYER
IN THE FURNISHING OF ANY ENGINEER, FIREMAN OR
HELPER AT ANY TIME REQUIRED BY THE EMPLOYER;"

IT IS THEREFORE APPARENT THAT IT WAS THE INTENTION OF THE PARTIES THAT PERSONS PRIMARILY ENGAGED AS HELPERS IN THE RESPONDENT'S BOILER ROOM WERE COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT. WHILE THE RESPONDENT HAS NEVER EMPLOYED SUCH A PERSON IT IS THE BOARD'S USUAL PRACTICE WHEN CERTIFYING A UNION FOR A CRAFT UNIT OF STATIONARY ENGINEERS TO CERTIFY IN THE TERMS OF THE USUAL CRAFT BARGAINING UNIT REPRESENTED BY SUCH UNIONS. THE BARGAINING UNIT DESCRIBED ABOVE IS IN ACCORDANCE WITH SUCH PRACTICE.

6. IN ADDITION, WHILE THE RESPONDENT OPERATES OUT OF MORE THAN ONE LOCATION IN METROPOLITAN TORONTO THE RESPONDENT EMPLOYS STATIONARY ENGINEERS AT ONLY ONE OF THESE LOCATIONS. AGAIN IN ACCORDANCE WITH THE BOARD SUSUAL PRACTICE THE GEOGRAPHICAL DESCRIPTION OF THE BARGAINING UNIT IS NOT CONFINED TO A STREET ADDRESS BUT COVERS ALL EMPLOYEES DESCRIBED IN THE BARGAINING UNIT IN THE AREA WITHIN THE MUNICIPALITY OF METROPOLITAN TORONTO.

11191-65-R: THE FIRECO EMPLOYEES' ASSOCIATION (APPLICANT) V. FIRECO SALES LIMITED (RESPONDENT).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members G. Russell Harvey and R. W. Teagle.

APPEARANCES AT THE HEARING: EDWIN T. NOBBS FOR THE APPLICANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: (FEBRUARY 14, 1966).

1. HAVING REGARD TO ALL THE EVIDENCE HEREIN, THERE IS NOTHING WHICH WOULD CAUSE THE BOARD TO INFER THAT MANAGEMENT WAS IN ANY WAY INSTRUMENTAL IN THE

FORMATION OF THE APPLICANT OR THAT EMPLOYEES WERE IN ANY WAY INFLUENCED BY MANAGEMENT.

- 2. The Board finds that the applicant is a trade union within the meaning of section 1 (1) (J) of The Labour Relations  $\hat{a}$ ct.
- 3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAIN-ING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER G. RUSSELL HARVEY: (FEBRUARY 14. 1966).

I DISSENT. FOR THE FOLLOWING REASONS I WOULD NOT GRANT STATUS TO THE APPLICANT EMPLOYEES! ASSOCIATION.

AN EMPLOYEE SOUGHT, AND WAS GRANTED PERMISSION BY MANAGEMENT, TO PASS OUT CIRCULARS AND TO HOLD A MEETING OF EMPLOYEES ON COMPANY PREMISES. THE ASSOCIATION REPRESENTATIVE TESTIFIED THERE WAS NO DISCUSSION BY HIM WITH MANAGEMENT OF THE PURPOSES OF THE CIRCULARS OR OF THE MEETING. THE RESPONDENT WAS NOT REPRESENTED AT THE HEARING.

IN VIEW OF THE IMMEDIATE PRECEDING COLLECTIVE BARGAINING EXPERIENCES, AND THE UNIVERSAL CARE EXERCISED BY MANAGEMENT IN GRANTING EMPLOYEES USE OF COMPANY PREMISES AND PERMISSION FOR CIRCULARIZING EMPLOYEES IT IS NOT WITHIN THE AREA OF CREDIBILITY THAT THE RESPONDENT WAS NOT IN SOME WAY AWARE OF THE PURPOSE OF THE REQUEST. IN ANY EVENT, THE EMPLOYEES HAD THE BENEFIT OF EMPLOYER ASSISTANCE.

I WOULD GRANT UNION STATUS FOR THE PURPOSE OF THIS ACT TO A GROUP OF EMPLOYEES WHO AT A MEETING HELD ON COMPANY PREMISES ONLY AGREED TO THE TERMS OF A CONSTITUTION, SELECTED TWO OFFICERS, BUT DID NO CONFIRMING ACT PRIOR, OR SUBSEQUENT, TO THE MEMBERSHIP SIGN-UP WHICH OCCURRED TWO MONTHS LATER.

I CANNOT EQUATE THE FAILURE TO SIGN MEMBERSHIP AT THE ORIGINATING MEETING TO ENABLE, OR CONFIRM, THE CONSTITUTIONAL ELECTION OF OFFICERS, AND OTHER ACTS, UNDER AN APPROVED CONSTITUTION BY ITS MEMBERSHIP WITH THE REASONABLE FORMALITY NORMALLY EXPECTED IN THE BOARD'S STATUS REQUIREMENTS.

11280-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION # 721 (APPLICANT) v. CHUBB-MOSLER AND TAYLOR SAFES LTD. (RESPONDENT) AND LOCAL 678 INTERNATIONAL CHEMICAL WORKERS UNION (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: AUBREY E. GOLDEN AND T. MICHAEL FOR THE APPLICANT; A. A. WHITE AND R. CASTLE FOR THE RESPONDENT; AND D. MACDONALD FOR THE INTERVENER.

DECISION OF THE BOARD: (JANUARY 27, 1966).

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "CHUBB-MOSLER AND TAYLOR SAFES LTD."
- AT THE HEARING IN THIS MATTER THE APPLICANT APPLIED TO EXTEND THE TERMINAL DATE FOR THE PURPOSE OF PERMITTING THE RESPONDENT TO FILE FURTHER LISTS OF EMPLOYEES AND ALSO FOR THE PURPOSE OF PERMITTING THE APPLICANT TO FILE FURTHER EVIDENCE OF MEMBERSHIP. IT IS APPARENT THAT THE APPLICANT DOES NOT HAVE SUCH EVIDENCE OF MEMBERSHIP AT THE PRESENT TIME AND THE PURPOSE FOR EXTENDING THE TERMINAL DATE WOULD BE TO PERMIT IT TO GO OUT AND ORGANIZE OTHER EMPLOYEES OF THE RESPONDENT. THE BOARD HAS BEEN VERY RIGID IN ITS APPLICATION OF SECTION 50 OF ITS RULES OF PROCEDURE DEALING WITH THE TIME WHEN EVIDENCE AS TO REPRESENTATION IN A TRADE UNION MUST BE FILED IN AN APPLICATION FOR CERTIFICATION AND THE BOARD CAN SEE NO JUSTIFIFACTION IN THE CIRCUMSTANCES OF THE PRESENT CASE FOR EXTENDING THE TERMINAL DATE TO PERMIT THE FILING OF SUCH EVIDENCE. SHOULD IT BECOME NECESSARY FOR THE RESPONDENT TO FILE A FURTHER LIST OF EMPLOYEES AND SPECIMEN SIGNATURES, THIS IS A MATTER THAT CAN BE DEALTH WITH AT A LATER STAGE IN THE PROCEEDINGS. THE MOTION BY THE APPLICANT TO EXTEND THE TERMINAL DATE IS ACCORDINGLY DENIED.
- 3. WE HAVE CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE SCOPE OF THE INQUIRY OF THE EXAMINER. IN ALL THE CIRCUMSTANCES OF THIS CASE WE HAVE DECIDED THAT THE EXAMINER'S INQUIRY SHOULD EXTEND TO THE EMPLOYEES OF THE RESPONDENT AT ITS BRAMPTON PLANT. IN COMING TO THIS CONCLUSION THE BOARD MUST NOT BE TAKEN AS HAVING DECIDED IN ANY WAY THAT SUCH EMPLOYEES ARE NECESSARILY APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT IN THE PRESENT CASE. THE PURPOSE OF THE EXTENDED INQUIRY WILL BE MERELY TO HAVE ALL THE MATERIAL FACTS BEFORE THE BOARD SO THAT PROPER REPRESENTATIONS MAY BE MADE TO THE BOARD IN CONNECTION WITH THE APPLICATION.
- 4. Mr. A. A. Morrow, Examiner, is appointed to inquire into and to report back to the Board on the composition of the bargaining unit and in particular, but without restricting the generality of the foregoing, the duties and responsibilities of the employees at Toronto classified by the respondent on its list filed with the Board as "servicemen". In the course of his inquiry, the Examiner is directed to examine employees of the respondent, if any, who it is claimed fall into the category of "ironworkers", at its Brampton plant.

11283-65-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) v. PRESLAND IRON & STEEL LTD. (RESPONDENT) AND GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: R. RUSSELL AND DOUG. TYNER FOR THE APPLICANT,
JAMES CLELAND FOR THE RESPONDENT, AND THOMAS C. DOYLE FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (FEBRUARY 8, 1966).

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "PRESLAND IRON & STEEL LTD."
- 2. This is an application for certification.
- 3. A PETITION IN OPPOSITION TO THE APPLICATION WAS FILED ON BEHALF OF NINE EMPLOYEES OF THE RESPONDENT.
- THE NINE SIGNATURES APPEAR ON THE SECOND OF TWO SHEETS OF PAPER WHICH COMPRISE THE PETITION. THE FIRST OR TOPMOST SHEET CARRIES THE STATEMENT OF DESIRE OR PETITION. AND IS SIGNED BY TOM DOYLE, THE REPRESENTATIVE OF THE EMPLOYEES. THIS SIGNATURE IS WITNESSED BY ANOTHER EMPLOYEE OF THE RESPONDENT. THE EVIDENCE IS THAT THE SIGNATURES WERE ATTACHED TO THE SECOND SHEET BEFORE THE FIRST SHEET HAD BEEN WRITTEN AND, FURTHERMORE, THAT THE FIRST SHEET WAS COMPOSED AND WRITTEN OUT BY THE GENERAL MANAGER OF THE RESPONDENT AND THEN ATTACHED TO THE SHEET BEARING THE SIGNATURES.
- IN VIEW OF THE ABOVE CIRCUMSTANCES THE BOARD IS NOT PREPARED TO HOLD THAT THE PETITION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.
- 6. The Board finds that the applicant is a trade union within the meaning of section  $\hat{\mathbf{1}}$  (1)  $(\mathbf{j})$  of The Labour Relations Act.
- 7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAIN-ING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11287-65-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. POWELL TRANSPORT (ONTARIO) LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members G. Russell Harvey and R. W. Teagle.

APPEARANCES AT THE HEARING: W. W. Tiller for the applicant, William S. Cook and W. J. Powell for the respondent, and J. Bruce Gardner and Fred Henderson for a group of employees.

DECISION OF THE BOARD: (FEBRUARY 11, 1966).

- 1. This is an application for certification. In opposition to the application there were twelve Individual petitions filed with the Board.
- 2. THE EVIDENCE SHOWS THAT THESE PETITIONS WERE COLLECTED IN AN ENVELOPE KEPT ON THE DESK OF THE OPERATIONS MANAGER OF THE RESPONDENT FOR THAT PURPOSE. THE LATTER GAVE INSTRUCTIONS TO THE BOOKKEEPER THAT HE WAS TO DO ANY WORK REQUESTED BY THE EMPLOYEES IN ORDER TO COMPLETE THE PETITIONS AND FORWARD THEM TO THE BOARD.
- 3. IN THE LIGHT OF THE ABOVE EVIDENCE OF MANAGEMENT PARTICIPATION, THE BOARD IS NOT PREPARED TO HOLD THAT THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY TO SEEK THE COMFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.
- 4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
- 5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 6. THE BOARD IS SATISIFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11337-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) v. BELLDAIRE MILK PRODUCTS LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEANCES AT THE HEARING: H. BUCHANAN FOR THE APPLICANT, DONALD E. HOUCK AND GEO. POWELL FOR THE RESPONDENT, AND LUKE SCHIPPER FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (FEBRUARY 22, 1966).

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "BELLDAIRE MILK PRODUCTS LTD."
- 2. This is an application for certification in opposition to which there was filed a statement of desire, or petition, bearing the signatures of four employees of the respondent. Mr. Luke Schipper gave evidence with respect to the petition.
- 3. Section 11 (3) (B) OF THE BOARD'S RULES OF PROCEDURE AND PARAGRAPH 8 (B) OF FORM 5, THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, BOTH INDICATE THAT EVIDENCE IS REQUIRED AS TO THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. Mr. SCHIPPER WAS ABLE TO GIVE THIS EVIDENCE ONLY WITH RESPECT TO HIS OWN AND ONE OTHER SIGNATURE, NEITHER OF WHICH IS RELEVANT INSOFAR AS THE EVIDENCE OF MEMBERSHIP IS CONCERNED. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.
- 4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
- 5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND DAIRY BAR EMPLOYEES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11347-65-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. B.D.C. LTD. (RESPONDENT)
AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members G. Russell Harvey and R. W. Teagle.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT, W. K. WINKLER FOR THE RESPONDENT, A. C. FINKELSTEIN FOR A GROUP OF EMPLOYEES.

#### DECISION OF THE BOARD:

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "8.D.C. LTD."
- 2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF METROPOLITAN TORONTO.
- 3. THE RESPONDENT, B.D.C. LTD., IS INCORPORATED UNDER THE LAWS OF CANADA WITH HEAD OFFICE IN THE CITY OF TORONTO. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF TRANSPORTING BUSINESS PAPERS AND DOCUMENTS FOR ITS CLIENTS SUCH AS BANKS AND TRUST COMPANIES FROM ONE LOCATION TO ANOTHER THROUGHOUT THE PROVINCE OF ONTARIO AND PARTS OF THE PROVINCE OF QUEBEC. AND ALSO TO DETROIT IN THE STATE OF MICHIGAN. THE RESPONDENT HAS TERMINAL FACILITIES IN WINDSOR, HAMILTON, TORONTO. OTTAWA AND MONTREAL. IT OWNS SOME FORTY VEHICLES WHICH IT USES IN THE CONDUCT OF ITS BUSINESS AND THESE VEHICLES ARE FULLY LICENSED IN BOTH ONTARIO AND QUEBEC FOR OVER THE ROAD TRANSPORT OF MATERIALS UP TO A CERTAIN WEIGHT. THE RESPONDENT OPERATES A PRECISELY COORDINATED RELAY SYSTEM ON A REGULAR WEEKLY SCHEDULE TO TRANSPORT THE BUSINESS PAPERS AND DOCUMENTS OF ITS CLIENTS THROUGHOUT THE PROVINCE OF ONTARIO AND AS FAR AS QUEBEC CITY IN THE PROVINCE OF QUEBEC. More specifically, on a daily basis, a driver from Toronto at a SCHEDULED TIME MEETS WITH A DRIVER FROM MONTREAL IN KINGSTON, AT WHICH POINT PAPERS AND DOCUMENTS DESTINED FOR CENTRES IN OPPOSITE DIRECTIONS ARE EXCHANGED AND SUBSEQUENTLY DELIVERED. SIMILAR SCHEDULED LIASONS FOR THE SAME PURPOSE ARE MADE BETWEEN DRIVERS IN OTHER CENTRES OF ONTARIO AND ALSO AT MONTREAL. AS WELL. A DAILY RUN IS OPERATED BY THE RESPONDENT BETWEEN CITAWA AND HULL AND BETWEEN WINDSOR AND DETROIT.
- 4. THE RESPONDENT SUBMITS THAT IT IS ENGAGED IN AN UNDERTAKING CONNECTING THE PROVINCES OF ONTARIO AND QUEBEC AND THAT ACCORDINGLY ITS OPERATIONS FALL WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA BY VIRTUE OF SECTION 92 (10) (A) AND SECTION 91 (29) OF THE BRITISH NORTH AMERICA ACT. THE RESPONDENT THEREFORE FURTHER SUBMITS THAT THE EMPLOYEES OF THE RESPONDENT ARE SUBJECT TO THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT R.S.C. 1952 C. 152, RATHER THAN THE ONTARIO LABOUR RELATIONS ACT.
- Having considered the nature of the respondent's operations and applying the principles and reasoning set out in A.G. Ontario v Winner (1954) A.C. 541; R. v Toronto Magistrates, ex parte Tank Truck Transport Limited (1960) O.R. 497; R. v Cooksville Magistrates, ex parte Liquid Cargo Lines Ltd. (1964) 1 O.R. 84, the Board finds that the Labour relations between the respondent and its employees fall within the exclusive jurisdiction of the Parliament of Canada. The Board, accordingly, further finds that it is without jurisdiction to entertain the instant application.
- 6. THE APPLICATION, THEREFORE, IS DISMISSED.

11353-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 (APPLICANT) v. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members G. Russell Harvey and R. W. Teagle.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, W. K. WINKLER FOR THE RESPONDENT.

DECISION OF THE BOARD: (FEBRUARY 23, 1966.)

- 1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
- 2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
- 3. THE BOARD FURTHER FINDS THAT ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT EXCLUDING MARLBOROUGH TOWNSHIP, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 4. The evidence is that on January 30th, 1966 there was a heavy snowstorm in Ottawa, the job site of the work being performed by the respondent, as a result of which none of the employees of the respondent with whom we are here concerned were able to report for work on January 31st, 1966, the date of the making of the instant application. All the employees concerned were at work on January 28th, the last working day prior to the date of the making of the application and they all were at work on the following day, February 1st, 1966.
- The established policy of the Board in applications for certification under the construction industry sections of the Act is to include in the bargaining unit for the purpose of the count only those employees who are employed by their employer on the actual date of the making of the application (see Welcon Limited, O.L.R.B. Monthly Report, March 1965, p. 627; Bertrand & Frere Construction Co. Limited, C.L.R.B. Monthly Report, July 1965, p. 292). The applicant submits, however, that the inability of the employees in question to report for work on the date of the making of the application was clearly "an act of God" and beyond their control. The applicant therefore requests that the Board in the instant case depart from its usual policy and take into account the fact that the employees concerned were at work on both days immediately prior and subsequent to the date of the making of the application.
- 6. THE BOARD IS OF THE OPINION THAT, WHILE THERE MAY BE MERIT IN THE APPLICANT'S SUBMISSION IN THE PARTICULAR CIRCUMSTANCES OF THE INSTANT CASE, TO ACCEDE TO THE APPLICANT'S REQUEST MIGHT WELL LEAD TO UNCERTAINTY AND CONTROVERSY REGARDING THE BOARD'S POLICY IN SUBSQUENT APPLICATIONS.

Accordingly, the Board is not prepared to make an exception from its established policy in the instant case. We would add that, in our view, the Board's policy is basically equitable to all parties and as well lends itself to the expeditious disposition of certification applications which is a primary consideration in the construction industry. Further, there is nothing to prevent the applicant from filing an application as of a date on which the employees concerned are in the employ of the respondent.

7. Since none of the employees concerned in this application were in the employ of the respondent on the date of the making of the application, the application is dismissed.

11357-65-R: LOCAL UNION # 1940, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. NORTHERN FLOORING (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (FEBRUARY 8, 1966).

- 1. The membership evidence filed by the applicant in this case consists of three certificates of membership indicating that the persons concerned are members of a local of the United Brotherhood of Carpenters & Joiners of America other than the applicant Local Union # 1940. In the  $\underline{0}$  J. Gaffney Limited case, Board File No. 11052-65-R, the Board pointed out that membership evidence in a local trade union other than the applicant local was not satisfactory evidence of membership and would not be accepted by the Board. In a previous decision involving Local Union # 1940, the present applicant, (see Bohn Tile Company Limited, Board File No. 11323-65-R) the Board found that such evidence was unsatisfactory with a result that a representation vote was directed. In the present case none of the certificates filed is satisfactory evidence of membership in the applicant.
- HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE APPLICATION IS DISMISSED.

11362-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE KELVIN-THOMPSON COMPANY LIMITED (RESPONDENT) AND THE UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members D. B. Archer and F. W. Murray.

APPEARANCES AT THE HEARING: E. C. WITTHAMES FOR THE APPLICANT, R. D. PERKINS AND E. C. BOSTON FOR THE RESPONDENT, D. M. STOREY FOR THE INTERVENER.

DECISION OF THE BOARD: (FEBRUARY 28, 1966).

1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "THE KELVIN-THOMPSON COMPANY LIMITED".

- 2. The Board finds that the <u>Intervener</u> is a trade union within the meaning of section  $l\ (l)\ (J)$  of the Labour Relations Act.
- 3. The Board finds that the intervener is a trade union within the meaning of section  $1\ (1)\ (J)$  of the Labour Relations Act.
- 4. The respondent is a subsidiary company of Allied Farm Equipment Incorporated, an American company with head office in Chicago. Fleury-Bissel Implements Limited located in Elora also is a subsidiary of Allied Farm Equipment Incorporated. Some time in the latter part of 1965 The Kelvin-Thompson Company Limited acquired the assets of Fleury-Bissel Implements Limited. Subsequently, the former company sundown its plant at Ajax and the latter company is in the same process at Elora. The manufacturing operations previously carried on by both companies have been relocated at St. Marys and the plant commenced operations early in January 1966 in the name of the Kelvin-Thompson Company Limited.
- 5. By certificate of the Board dated October 14th, 1964, the intervener was certified for all employees of the respondent at Ajax (with certain exceptions that are not here material). On March 5th, 1965 the respondent and the intervener entered into a collective agreement effective from February 11th, 1968 to February 11th, 1968. The "Union Recognition" clause, however, did not place any limitation on the geographic area covered by the agreement. In other words, the applicant and the intervener entered into a province-wide agreement.
- G. When the respondent and the intervener entered into the collective agreement, the respondent had only the one plant located at Ajax. Accordingly, having regard to the Board's certification of the intervener as bargaining agent for the employees of the respondent at Ajax, it is clear that at the time the collective agreement was entered into by the parties the intervener was entitled to represent the employees of the respondent covered by the "Union Recognition" clause of the agreement. The Board therefore finds that section 45a of the Act has no application in the circumstances of the instant case and that there is a valid and binding collective agreement in effect between the respondent and the intervener.
- 7. THE BOARD FURTHER FINDS THAT HAVING REGARD TO THE SCOPE OF THE "UNION RECOGNITION" CLAUSE IN THE COLLECTIVE AGREEMENT, THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT AT ST. MARYS. THE APPLICATION OF THE APPLICANT, THEREFORE, IS UNTIMELY.
- 8. THE APPLICATION ACCORDINGLY IS DISMISSED.
- 11420-65-R: OPERATIVE PLASTERER'S AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 159 (APPLICANT) v. CULP BROS. LTD. AND BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION, LOCAL 12 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (FEBRUARY 24, 1966).

- 1. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "CULP BROS. LTD.".
- 2. THE NAME OF THE INTERVENER APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "BRICKLAYERS', MASONS' AND PLASTERERS' INTERNATIONAL UNION. LOCAL 12".
- The evidence of membership filed by the applicant consisted of one statement of membership and four receipts. The receipts are countersigned by the payor. There are no application cards and there is no other evidence of membership or desire for membership filed by the applicant for the four persons who counter signed the receipts. The evidence of membership respecting these four persons does not meet the Board's standards in these matters. See Matthews Construction Company Limited, C.C.H. Transfer Binder, (1955-59), \$\Pilon 16,017; C.L.S. 76-479.

WHILE THE STATEMENT OF MEMBERSHIP MAY CONSTITUTE SATISFACTORY
EVIDENCE OF MEMBERSHIP, THAT EVIDENCE RELATES ONLY TO ONE PERSON. THE
APPLICANT STATES THAT THERE ARE FIVE PERSONS IN THE BARGAINING UNIT AND THE
RESPONDENT STATES THAT THERE ARE SEVEN PERSONS IN THE BARGAINING UNIT. IT
IS OBVIOUS THAT THE SATISFACTORY EVIDENCE OF MEMBERSHIP IS NOT SUFFICIENT
TO ENABLE THE BOARD EVEN TO ORDER A VOTE.

4. IN THESE CIRCUMSTANCES, THEREFORE, THE APPLICATION MUST BE DISMISSED.

## INDEXED ENDORSEMENT - TERMINATION

11361-65-R: ANNE RESE, JOHN FARRUGIA AND GORDON PERRY (APPLICANTS) v.
INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

## (RE: BRUNSWICK OF CANADA LTD.)

BEFORE: J. H. BROWN, JEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. W. BINNING, A. RESE, J. FARRUGIA AND G. PERRY FOR THE APPLICANTS, NO ONE FOR THE RESPONDENT.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE:

- 1. This is an application under section 45 of the Act for a delcaration terminating bargaining rights.
- 2. The respondent is the bargaining agent for a unit of employees of Brunswick of Canada Ltd. (Hereinafter referred to as the Company). The Company and the union were bound by a collective agreement effective until December 31st, 1965 and from year to year thereafter subject to notice. The collective

AGREEMENT PROVIDES THAT SHOULD EITHER PARTY DESIRE TO MODIFY, AMEND OR TERMINATE THE AGREEMENT NOTICE OF SUCH DESIRE IS TO BE GIVEN TO THE OTHER PARTY NOT MORE THAN 120 DAYS NOR LESS THAN 90 DAYS PRIOR TO ANY ANNIVERSARY DATE OF THE AGREEMENT. THE RESPONDENT UNION BY REGISTERED LETTER DATED SEPTEMBER 23RD, 1965, WHICH IS WITHIN THE SPECIFIED PERIOD, GAVE NOTICE TO THE COMPANY OF ITS DESIRE TO REOPEN THE COLLECTIVE AGREEMENT FOR THE PURPOSE OF MAKING AMENDMENTS THERETO. IN ITS LETTER OF SEPTEMBER 23RD THE RESPONDENT FURTHER STATED THAT IT WOULD FORWARD ITS PROPOSED AMENDMENTS AT AN EARLY DATE AT WHICH TIME ARRAUGEMENTS COULD BE MADE TO COUNTENED REGOTIATIONS.

- The evidence before the Board is that since receipt by the Company of the respondent's letter of September 23rd, 1965 the respondent has neither verbally nor in writing in any way communicated with the Company. We note further that the respondent did not file a reply to the instant application nor did anyone appear at the Board Hearing on February 16th, 1966 on behalf of the respondent to offer any explanation for its failure to commence negotiations with the Company despite the fact that a period of nearly five months has elapsed since the giving of notice.
- 4. HAVING REGARD TO ALL THESE CIRCUMSTANCES, THE BOARD DECLARES THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF THE COMPANY FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

DECISION OF BOARD MEMBER E. BOYER: (FEBRUARY 21, 1966).

I DISSENT. IN THE CIRCUMSTANCES, I WOULD HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT.

### INDEXED ENDORSEMENT - STRIKE UNLAWFUL

11354-65-U: Men's Clothing Manufacturers Association of Ontario - and-FIRTH BROS. LIMITED (Applicants) v. Joseph Wilson C'Connor, William G. Turner, James Black, Daniel Demers, Lloyd Harrington, Pieter B. Van der Wel, Frank Mancini, Robert Draker, Alfred Arsenault, Bruno Molinaro, Gary Wade and Frank A. Aquino (Respondents).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members H. F. Irwin and D. McDermott.

APPEARANCES AT THE HEARING: WILLIAM S. COOK, JAMES C. FIRTH, A. BLAKE AND T. ALPIN FOR THE APPLICANTS, AND FRANK AQUINO, JIM BLACK, GARY WADE, ALFRED ARSENAULT, R. W. DRAKER, LLOYD HARRINGTON, FRANK MANCINI, WM. TURNER, JOSEPH W. O'CONNOR, DANIEL DEMERS, BRUNO MOLINARO AND PIETER B. VAN DER WEL FOR THE RESPONDENTS.

DECISION OF THE BOARD: (FEBRUARY 10, 1966).

1. This is an application for a declaration that the named respondents engaged in an unlawful strike contrary to section  $5^{L}$  of the Labour Relations Act.

- 2. The named respondents are members of a bargaining unit of employees of Firth Bros. Limited represented by the Amalgamated Clothing Workers of America. There is a collective agreement in effect between the applicants and the Amalgamated Clothing Workers, the term of which extends from the 1st day of December, 1964, to the 30th day of November, 1967.
- Commencing on January 28th, 1966, each of the Respondents, who are classified as cutters, engaged in a course of conduct which resulted in their being absent from work on alternative days. Thus, out of a total complement of 15 cutters, 5 cutters failed to appear on February 1st; on February 2nd these 5 reported for work, but 5 others were absent; on February 3rd 5 cutters were absent and on February 6th 6 cutters were absent. A chart (Exhibit 2) derived from the time sheets of the respondents, clearly indicates a pattern of alternate days of work and days of absence for each of the respondents. This procedure was in operation at the time of the application and indeed, as indicated above, up to the 6th of February.

Two of the respondents offered evidence. Mr. Draker stated that he was not on strike and that his absences were due to illness. He was unable to state the nature of the illness, but was hopeful of finding it out later in the week when he visited his doctor. He said he had had no conversation with the other respondents with respect to the absences.

FRANK MANCINI ALSO TESTIFIED THAT HIS ABSENCES WERE DUE TO ILLNESS.
HE HAD HAD NO DISCUSSION ABOUT ABSENTEEISM WITH ANY OF THE OTHER EMPLOYEES.
IT IS DIFFICULT TO ACCEPT THIS EVIDENCE WHICH ATTEMPTS TO ESTABLISH AN ALTERNATING TYPE OF INDISPOSITION OCCURRING AT A TIME WHEN FELLOW EMPLOYEES WERE ABSENTING THEMSELVES FROM WORK ACCORDING TO A SIMILAR PATTERN.

There is an unavoidable inference of concerted action in the course of conduct followed by the respondents and it is readily apparent that such a pattern of behaviour, which did in fact limit the output of the applicant, constitutes a strike within the meaning of section 1 (1) (1) of The Labour Relations Act. The Board declares that the strike engaged in by the named respondents is contrary to section 54 (1) of The Labour Relations Act and is therefore unlawful.

## INDEXED ENDORSEMENT - PROSECUTION

11245-65-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CANADIAN STANDARDS ASSOCIATION TESTING LABORATORIES (RESPONDENT).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: LORNE INGLE, WM. ACTON AND HOWARD INGRAM FOR THE APPLICANT, R. A. SMITH, Q.C., J. D. BARNES AND J. E. HOUCK FOR THE RESPONDENT.

DECISION OF THE BOARD: (FEBRUARY 7, 1966).

- 1. This is an application for consent to institute prosecution.
- 2. The Nature of the Alleged Offence is shown as: "Violation of Section 12 and 59 of The Labour Relations Act."
- 3. THE MATERIAL FACTS RELIED UPON ARE AS FOLLOWS:

THAT ON JUNE 22, 1965, THE APPLICANT WAS CERTIFIED AS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AND SUBSEQUENT TO THAT TIME COMMENCED TO BARGAIN COLLECTIVELY PURSUANT TO SECTION 12 OF THE LABOUR RELATIONS ACT. ON SEPTEMBER 30, 1965, THE GENERAL MANAGER OF THE RESPONDENT, MR. G. B. TEBO, FORWARDED A CIRCULAR LETTER TO ALL C.S.A. EMPLOYEES INDICATING THAT THE EMPLOYEES PENSION PLAN WOULD BE INTEGRATED WITH THE CANADA PENSION PLAN AND HAS SUBSEQUENTLY REFUSED TO ACKNOWLEDGE THAT THE EMPLOYEES! PENSION PLAN WAS A PROPER SUBJECT FOR COLLECTIVE BARGAINING. ON WEDNESDAY, DECEMBER 15, 1965, BEFORE A CONCILIATION OFFICER, MR. WM. McGuire, THE RESPONDENT REPRESENTATIVE FURTHER INDICATED THAT THE EMPLOYEES PENSION PLAN WAS NOT NEGOTIABLE AND THAT EFFECTIVE JANUARY 1, 1966, IT WOULD BE INTEGRATED WITH THE CANADA PENSION PLAN.

- 4. The Board proposes to deal first with the allegations with respect to section 12 of the Act.
- 5. SECTION 12 READS AS FOLLOWS:

THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

- 6. The parties agreed that the applicant trade union had been duly certified, and that notice of desire to bargain had been given in compliance with section 11 of the Act.
- 7. There was much testimony and a plethora of exhibits indicating that the parties have bargained concerning a wide range of items and have reached agreement on some. They have met on twelve occasions from July 28th, 1965, to January 7th, 1966, inclusive and were scheduled to hold a further meeting on January 17th, 1966.

- 8. THE EVIDENCE IS THAT THE COMPANY HAS NEVER REFUSED TO MEET WITH THE UNION. IN THE OPINION OF MR. INGRAM, PRESIDENT OF THE LOCAL, BOTH PARTIES HAVE BEEN TRYING TO GET AN AGREEMENT. HE AGREED WITH THE SUGGESTION OF COUNSEL FOR THE RESPONDENT THAT TOUGH BARGAINING HAD TAKEN PLACE AND THAT AGREEMENT HAD BEEN REACHED ON A NUMBER OF ITEMS.
- 9. THE APPLICANT'S CASE, HOWEVER, IS BASED UPON THE SPECIFIC ALLEGATIONS THAT WITH RESPECT TO THE PENSION PLAN THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH.
- The evidence relating to the pension issue indicates that the initial position taken by the company, and maintained for a considerable time, was that it would not negotiate with respect to pensions. Later in the course of the bargaining, around the 3rd to 7th of September, 1965, the company gave the union a draft of a proposed collective agreement (Exhibit 4). Attached to this document was the following note "Pension etc. etc." The second paragraph sets out the reasons for which the company feels the pension plan is not negotiable. Some considerable time later and subsequent to the date of the application for consent to prosecute, Mr. Acton, Ontario Regional Director of Canadian Union of Public Employees, wrote the following letter, dated January 13th, 1966, to Mr. J. D. Barnes, Secretary of C.S.A.

FURTHER TO OUR VERBAL AGREEMENT OF JANUARY 7TH 1966 TO EXCHANGE PROPOSED CLAUSES ON THE SUBJECT OF PENSION, WE ENCLOSED HEREWITH OUT PROPOSED ARTICLE 10 PENSION FOR YOUR CONSIDERATION.

11. THE PROPOSED CLAUSE 10 REFERRED TO IN THE LETTER READS AS FOLLOWS:

#### ARTICLE 10 - PENSIONS

- (a) The provisions respecting the Pension Plan amended as of April 1st, 1964, and amended 196 to comply with the Ontario Pension Benefits Act and amended 196 for purposes of Integration with the Canada Pension Plan shall continue in effect during the period of this Collective Agreement.
- (B) Upon the commencement of the Canada Pension Plan there shall be a deduction from employees a total of 5% of salary to include 1.8% of salary on the first \$5000. Of annual earnings less the first \$600. Of annual earnings to a maximum of \$79.20 for the Canada Pension Plan.
- (c) Upon the commencement of the Canada Pension
  Plan the Company shall contribute 5% of employees
  annual salary to include 1.8% of salary on the

FIRST \$5000. OF ANNUAL EARNINGS LESS THE FIRST \$600. OF ANNUAL EARNINGS TO A MAXIMUM OF \$79.20 FOR THE CANADA PENSION PLAN.

- (d) The Balance of Deductions from Employees and Employer will provide the Benefits from the Canadian Standards Association Pension Plan.
- (E) THE BENEFITS WILL BE AGREED UPON BETWEEN MANAGEMENT AND THE UNION.
- (F) No additional changes or Amendments to the agreed upon Pension Plan will be entered into unless as mutually agreed between the parties to this Agreement.
- (G) THE AGREED UPON PENSION PLAN (AS DESCRIBED IN (A) ABOVE) SHALL BE ATTACHED AS "APPENDIX A" AND SHALL FORM AN INTEGRAL PART OF THIS COLLECTIVE AGREEMENT.
- 12. ON THE 14TH OF JANUARY MR. BARNES REPLIED TO MR. ACTON AS FOLLOWS:

This is to acknowledge receipt of your letter of January 13th, 1966, which was handed to me at noon yesterday, referable to the subject of pension which was discussed at meetings prior to January 7th and at the meeting of January 7th to which you refer in your letter. In accordance with our discussion on January 7th, we have requested information about the Pension Plan and will provide you with this as soon as it has been received.

Your proposed Article 10 to the Collective Agreement will be presented to our Negotiating Committee and we will review this matter again with you at the earliest opportunity.

- 13. IT IS TO BE NOTED THAT IN THE LETTER MR. BARNES UNDERTAKES TO REVIEW THE MATTER WITH MR. ACTON AT THE EARLIEST POSSIBLE DATE.
- 14. The correspondence indicates that the parties had had some discussion concerning pensions on January 7th, 1966, and that the letters and proposed clause arose out of an agreement reached at that time to, and the emphasis is added, exchange proposed clauses. Barnes' letter of January 14th contains an undertaking to review the matter again, with Acton, at the earliest opportunity.
- 15. THE BOARD FINDS THAT THIS CORRESPONDENCE ALONE, LATE IN THE DAY AS IT MAY HAVE BEEN, ANSWERS THE APPLICANT'S CHARGE OF FAILURE ON THE PART OF THE

RESPONDENT TO BARGAIN IN GOOD FAITH WITH RESPECT TO PENSIONS, AND LEAVES NO. REASONABLE GROUNDS UPON WHICH TO BASE A PROSECUTION FOR A VIOLATION OF SECTION  $12\,$ .

- 16. THE APPLICATION INSOFAR AS IT REFERS TO SECTION 12 IS THEREFORE DISMISSED.
- 17. AS TO SECTION 59. A REFERENCE TO THE MATERIAL FACTS SET OUT IN THE APPLICATION INDICATES THAT AT THE DATE THE APPLICATION WAS MADE. DECEMBER 28th, 1965, THE OFFENCE ALLEGED HAD NOT YET OCCURRED AND, AS THE FACT IS, COULD NOT HAVE OCCURRED UNTIL JANUARY 1, 1966. THE GIST OF THE CHARGE IS THAT MR. McQuire, A REPRESENTATIVE OF THE RESPONDENT, INDICATED THAT THE EMPLOYEES' PLAN WAS NOT NEGOTIABLE AND THAT, AND THIS IS THE HEART OF THE CHARGE, EFFECTIVE JANUARY 1, 1966, IT WOULD BE INTEGRATED WITH THE CANADA PENSION PLAN. THE CHARGE IS BASED, NOT UPON AN ACT DONE, BUT RATHER UPON THE EXPRESSED INTENT OF THE RESPONDENT TO DO SOMETHING AT A DATE IN THE FUTURE. CLEARLY, AT THE TIME OF THE FILING OF THE APPLICATION NO CHANGE OR ALTERATION WITH RESPECT TO THE CANADA PENSION PLAN OR THE ASSOCIATION'S PENSION PLAN HAD BEEN MADE, NOR COULD IT BE ASSERTED WITH ANY DEGREE OF CERTAINTY THAT THE INTENT WOULD, IN FACT, BE IMPLEMENTED. AS THE MATTER TURNED OUT, THE ACTION TAKEN BY THE COMPANY WAS NOT THAT ALLEGEDLY INDICATED BY Mr. McQuire. The action taken by the company was to have the respondent's PLAN AND THE CANADA PENSION PLAN STAND "SIDE BY SIDE".
- 18. It is the opinion of the Board that consent to prosecute should not be given where, as in the present case, the alleged violation has not occurred at the date the application to prosecute is made. An application to prosecute which is not based upon an allegation of violation of the Act at or before the date the application is made is surely a nullity and the subsequent happening of events which, as it were, tend to complete the application or supply the deficiencies therein, cannot cure so basic a fault. In addition it would seem a plain misuse of its discretionary powers for the Board, by entertaining such applications, to open the door for the filing of applications to prosecute which are based solely upon the statements of intent of one of the parties to do or referain from doing something in the future which might or might not, if or when done, provide grounds for granting leave to prosecute.
- 19. Consent to prosecute is denied herein, but solely on the grounds that the application is premature.

### INDEXED ENDORSEMENTS - SECTION 79

10709-65-M: Wood, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (COMPLAINANT) v. DONALDSON-BARRON COMPANY LTD. (RESPONDENT) AND UNITED BROTHERHOOD OF CARPENTERS, LOCAL 1747 (RESPONDENT).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. Koskie and K. Weller for the applicant; no one appearing for the respondent Donaldson-Barron Company Ltd.; and T. E. Armstrong, F. Leger and R. Reid appearing for the respondent United Brotherhood of Carpenters, Local 1747.

DECISION OF THE BOARD: (FEBRUARY 21, 1966).

APPLICATION BY WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 97 (HEREINAFTER REFERRED TO AS THE "LATHERS UNION") FOR REVIEW BY THE BOARD OF AN INTERIM ORDER OF A JURISDICTIONAL DISPUTES COMMISSION UNDER SUBSECTION 6 of Section 66 of The Labour Relations Act. At the initial Hearing Held By THE BOARD IN CONNECTION WITH THIS APPLICATION, COUNSEL FOR THE UNITED Brotherhood of Carpenters, Local 1747 (Hereinafter Referred to as the "CARPENTERS UNION", WHICH WAS THE APPLICANT IN THE PROCEEDINGS BEFORE THE JURISDICTIONAL DISPUTES COMMISSION, RAISED A PRELIMINARY OBJECTION CONCERNING THE TIMELINESS OF THE APPLICATION. THE BOARD HEARD THE REPRESENTATIONS OF THE PARTIES ON THIS OBJECTION AND HELD (FOR REASONS GIVEN IN WRITING) THAT THE APPLICATION WAS TIMELY. SUBSEQUENTLY, COUNSEL FOR THE CARPENTERS UNION REQUEST THAT THE BOARD REVOKE ITS DECISION REFERRED TO ABOVE AND DISMISS THE APPLICATIO THIS REQUEST WAS DENIED AND THE BOARD DIRECTED THAT THE HEARING OF THE APPLICATION CONTINUE. COUNSEL FOR THE CARPENTERS UNION THEN REQUESTED THAT THE APPLICATION BE RELISTED FOR HEARING "FOR THE PURPOSE OF ALLOWING THE PARTIES TO DIRECT ARGUMENT TO THE QUESTION OF WHETHER, IN THE CIRCUMSTANCES OF THIS CASE. INCLUDING THE FACT THAT THE PROJECT REFERRED TO IN THE INTERIM ORDER HAS BEEN COMPLETED, THE BOARD CAN OR SHOULD MAKE ANY POSITIVE DECLARATION OR DETERMINATION Counsel for the Lathers Union replied to this request as follows: "Our client HAS ADVISED US THAT IT IS AGREEABLE TO HAVING THIS APPLICATION RE-SCHEDULED FOR HEARING FOR THE PURPOSE OF DIRECTING ARGUMENT ON THE ISSUES AS TO WHETHER OR NO THE BOARD SHOULD, UNDER THE CIRCUMSTANCES OF THIS CASE, MAKE ANY DETERMINATION"

THE APPLICATION WAS THEN RESCHEDULED FOR HEARING AND, AT THE HEARING THAT WAS HELD DECEMBER 15, 1965, IN THIS MATTER, COUNSEL FOR THE CARPENTERS UNION AND FOR THE LATHERS UNION AGREED THAT THE "WORK" CONCERNED - AT THE NORTH YORK BRANSON HOSPITAL - HAD BEEN COMPLETED. COUNSEL FOR THE CARPENTERS UNION MADE TWO ALTERNATIVE SUBMISSIONS:

- (1) THAT, HAVING REGARD TO THE DURATION OF THE INTERIM ORDER, THE BOARD HAD NO JURISDICTION TO GRANT ANY RELIEF TO THE LATHERS UNION;
- (II) THAT, IF THE BOARD DID HAVE JURISDICTION TO GRANT RELIEF TO THE LATHERS UNION, IT OUGHT NOT TO DO SO AT THIS STAGE.

AS TO THE FIRST SUBMISSION, THE SITUATION IS THAT THE INTERIM ORDER RELATED TO A COMPLAINT THAT THE RESPONDENT DONALDSON-BARRON COMPANY LTD. HAD WRONGLY ASSIGNED THE FOLLOWING WORK, NAMELY: "'THE ERECTING OF ACOUSTIC CEILING SYSTEM H. & T. INCLUDING H. BAR, T. BAR AND ACOUSTIC TILE' AT THE NORTH

YORK BRANSON HOSPITAL PROJECT, WILLOWDALE." THE ORDER DECLARED THAT THE DIRECTIVE ISSUED BY THE COMMISSION WAS LIMITED TO "THIS PARTICULAR JOB ONLY". COUNSEL CONTENDED THAT THE BOARD'S JURISDICTION TO REVIEW AN INTERIM ORDER OF A JURISDICTIONAL DISPUTES COMMISSION WAS LIMITED TO CASES IN WHICH THERE IS, AT THE TIME WHEN THE BOARD IS REVIEWING THE DROER, A PROHIBITION OF A LAWFUL STRIKE OR SOME INTERFERENCE WITH BARGAINING. SINCE IN THIS CASE ANY CONCEIVABLE PROHIBITION OR INTERFERENCE WAS SOMETHING THAT MIGHT HAVE BEEN OPERATIVE IN THE PAST BUT NOT AT THE TIME WHEN THE REQUEST FOR REVIEW WAS MADE, HE SUBMITTED THAT THE BOARD COULD NOT SATISFY ITSELF THAT THE CONDITIONS PRECEDENT TO THE EXERCISE BY IT OF ITS JURISDICTION UNDER SUBSECTION 6 OF SECTION 66 OF THE ACT ARE IN EXISTENCE AT THIS TIME. ACCORDINGLY, HE CONTENDED THAT THE BOARD HAD NO AUTHORITY TO GRANT THE RELIEF SOUGHT. SINCE, FOR THE REASONS INDICATED BELOW, IT IS UNNECESSARY FOR US TO DEAL WITH THIS SUBMISSION, WE DO NOT EXPRESS ANY CONCLUDING OPINION ON THIS POINT, BUT WE DO FEEL IMPELLED TO STATE THAT WE WOULD HAVE BEEN LOATH TO REST OUR DECISION ON THIS GROUND. Such a CONSTRUCTION OF THE RELEVANT PROVISIONS MIGHT WELL LEAD TO A STATE OF AFFAIRS, WHERE THERE ARE A NUMBER OF SHORT-TERM PROJECTS, IN WHICH A PARTY MIGHT BE COMPLETELY BARRED FROM OBTAINING RELIEF FROM THE BOARD ALTHOUGH ITS RIGHT TO STRIKE WAS FRUSTRATED AND ITS BARGAINING RIGHTS EFFECTIVELY DESTROYED. IN THIS CONNECTION, REFERENCE MAY BE HAD TO SECTION 4 OF THE INTERPRETATION Аст, R.S.O. 1960, с.191:

THE LAW SHALL BE CONSIDERED AS ALWAYS SPEAKING AND, WHERE A MATTER OR THING IS EXPRESSED IN THE PRESENT TENSE, IT IS TO BE APPLIED TO THE CIRCUMSTANCES AS THEY ARISE, SO THAT EFFECT MAY BE GIVEN TO EACH ACT AND EVERY PART OF IT ACCORDING TO ITS TRUE INTENT AND MEANING.

INDEED, COUNSEL FOR THE CARPENTERS UNION CONCEDED THAT, WHERE AN INTERIM ORDER DID PREVENT A LAWFUL STRIKE, A PARTY COULD ASK THE BOARD FOR REVIEW OF THAT INTERIM ORDER NOTWITHSTANDING THAT THE PARTICULAR WORK IN QUESTION HAD BEEN COMPLETED. MOST OF THE ARGUMENT PRESENTED BY COUNSEL FOR THE LATHERS UNION WAS DIRECTED TO SHOW THAT THE BOARD DID HAVE JURISDICTION TO DEAL WITH AN INTERIM ORDER EVEN THOUGH THE WORK INVOLVED WAS COMPLETED. IN THE LIGHT OF THE VIEWS WE HAVE EXPRESSED ON THIS HEAD OF THE ARGUMENT OF COUNSEL FOR THE CARPENTERS UNION, IT IS NOT NECESSARY FOR US TO SAY MORE ON THAT POINT HERE.

We come now to the second head of the submissions by counsel for the Carpenters Union. His position, in short, is that the decision of the Jurisdictional Disputes Commission to Issue an interim order in this case was come to, as provided for in subsection 1, after preliminary consultations and before the parties had had the full opportunity to present evidence and to make their submissions, as would be the case on a request for reconsideration under subsection 3 of section 66. If the Lathers Union were to obtain relief from the Board on the instant application, the Board would in effect enable the Lathers Union to bypass the Jurisdictional Disputes Commission. Counsel for the Lathers Union, on the other hand, draws attention to the wording of subsection 6 of section 66 which expressly confers upon the Board, in the

CIRCUMSTANCES THERE INDICATED, AUTHORITY TO DEAL WITH AN INTERIM ORDER AS WELL AS WITH A FINAL DIRECTION OF A JURISDICTIONAL DISPUTES COMMISSION.

THERE IS NO QUESTION BUT THAT, IN A PROPER CASE, THE BOARD IS AUTHORIZED TO REVIEW AN INTERIM ORDER OF A JURISDICTIONAL DISPUTES COMMISSION AND TO GIVE TO A PARTY ENTITLED THERETO RELIEF AS SET OUT IN SUBSECTION 6 OF SECTION 66. THE ISSUE BEFORE US HERE, HOWEVER, IS WHETHER WE SHOULD GRANT RELIEF TO THE LATHERS UNION AT THIS STAGE, ASSUMING THAT THAT UNION ESTABLISHES THAT IT HAS MET THE CONDITIONS REQUIRED FOR RELIEF. IF IT WERE SHOWN THAT THE INTERIM ORDER PROHIBITED THE LATHERS UNION FROM CALLING, OR ITS MEMBERS FROM ENGAGING IN. A LAWFUL STRIKE IT IS OBVIOUS THAT THE PRESENT APPLICATION WOULD PROVIDE THE ONLY EFFECTIVE RELIEF THAT THE LATHERS UNION COULD HAVE AND THE BOARD SHOULD NOT DENY TO THAT UNION THE OPPORTUNITY OF ESTABLISHING THAT IT IS ENTITLED TO THE RELIEF SOUGHT. SO MUCH INDEED COUNSEL FOR THE CARPENTERS UNION CONCEDED DURING THE COURSE OF THE ARGUMENT. AS WE HAVE ALREADY INDICATED. No such Question arises in this case. The basis for the instant application, THEN, IS THAT THE INTERIM ORDER OF THE JURISDICTIONAL DISPUTES COMMISSION INTERFERED WITH THE "BARGAINING RIGHTS" THAT THE LATHERS UNION CLAIMS TO BE ENTITLED TO EXERCISE.

THE LABOUR RELATIONS ACT HAS ENTRUSTED TO A JURISDICTIONAL DISPUTES COMMISSION AUTHORITY TO DEAL WITH WORK ASSIGNMENT DISPUTES. TO PARAPHRASE THE LANGUAGE OF ROACH J. A. IN RE THE ONTARIO LABOUR RELATIONS BOARD, BRADLEY ET AL. AND CANADIAN GENERAL ELECTRIC CO. LTD., [1957] C.P. 316, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-1959, 415,118, IT IS IMPOSSIBLE TO ESCAPE THE CONCLUSION THAT THE LEGISLATURE HAD CONFIDENCE THAT SUCH A COMMISSION WOULD BE PECULIARLY QUALIFIED TO DEAL WITH THE PRACTICAL PROBLEMS THAT ARISE WITHIN THE AREA OF THE JURISDICTION CONFERRED ON IT. IT IS IMPLICIT IN THE LEGISLATION THAT A JURISDICTIONAL DISPUTES COMMISSION, IN DEALING WITH A WORK ASSIGNMENT DISPUTE, MIGHT ISSUE AN INTERIM ORDER OR DIRECTION THAT RUNS COUNTER TO THE BARGAINING RIGHTS THAT ONE OF THE PARTIES TO THE DISPUTE WOULD BE ENTITLED TO EXERCISE APART FROM THE INTERIM ORDER OR DIRECTION. BARGAINING RIGHTS IS AN AREA IN WHICH THE LABOUR RELATIONS BOARD HAS COMPETENCE BY REASON OF ITS PECULIAR QUALIFICATIONS. THE ACT DOES NOT DELCARE THAT AN INTERIM ORDER OR DIRECTION OF A JURISDICTIONAL DISPUTES COMMISSION SHOULD, IN THE FINAL ANALYSIS, OVERRIDE BARGAINING RIGHTS OR THAT BARGAINING RIGHTS SHOULD HAVE PRIMACY OVER AN INTERIM ORDER OR DIRECTION. THE ACT GIVES TO THE BOARD A DISCRETION. IT MAY QUASH THE INTERIM ORDER OR DIRECTION OF THE JURISDICTIONAL DISPUTES COMMISSION, AND THUS LEAVE THE BARGAINING RIGHTS OF THE PARTIES IN THE SAME CONDITION AS THEY WERE BEFORE THE ORDER OR DIRECTION WAS MADE, OR IT MAY MODIFY THE PRE-EXISTING BARGAINING RIGHTS OF THE PARTIES TO ENABLE AN INTERIM ORDER OR DIRECTION, THAT CONFLICTS WITH SUCH BARGAINING RIGHTS, TO PREVAIL. IN SHORT, IN ARRIVING AT A DECISION ON A REQUEST FOR REVIEW, THE BOARD HAS TO TAKE INTO ACCOUNT BOTH THE BARGAINING RIGHTS THAT ANY OF THE PARTIES MAY HAVE AND THE VIEWS OF THE JURISDICTIONAL DISPUTES COMMISSION ON THE WORK ASSIGNMENT. IT SEEMS TO US THEREFORE THAT, EXCEPT WHERE SPECIAL CIRCUMSTANCES EXIST, E.G., WHERE THE PARTIES ARE BEING HAMPERED IN NEGCTIATING A NEW AGREEMENT OR IN SOME SIMILAR SITUATION, THE BOARD SHOULD HAVE AVAILABLE TO IT THE BEST THINKING OF THE JURISDICTIONAL DISPUTES COMMISSION BEFORE IT ATTEMPTS TO REVIEW AN ORDER THAT

THE JURISDICTIONAL DISPUTES COMMISSION HAS MADE IN A SPECIFIC INSTANCE, AND THE BEST THINKING WOULD EMERGE ON A RECONSIDERATION OF AN INTERIM ORDER WHERE, AS WE HAVE ALREADY POINTED OUT, THE JURISDICTIONAL DISPUTES COMMISSION WOULD HAVE HAD THE ADVANTAGE OF FULL PRESENTATION OF EVIDENCE AND ARGUMENT BY THE PARTIES. WERE WE TO ARRIVE AT ANY OTHER CONCLUSION, IT IS CONCEIVABLE THAT, ALTHOUGH A JURISDICTIONAL DISPUTES COMMISSION MIGHT REACH ONE CONCLUSION ON THE BASIS OF THE INITIAL CONSULTATION THAT IT HOLDS WITH THE PARTIES IN MAKING AN INTERIM ORDER, IT MIGHT COME TO ANOTHER CONCLUSION AFTER IT HAS HAD THE OPPORTUNITY OF CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES ON RECONSIDERATION OF THE INTERIM ORDER. IF, ON REVIEWING AN INTERIM ORDER, THE BOARD WERE TO ALTER BARGAINING RIGHTS TO ALLOW THE PARTIES TO CONFORM TO THE INTERIM ORDER, IT MIGHT BE CALLED UPON TO REVERSE THAT DECISION AFTER THE JURISDICTIONAL DISPUTES COMMISSION HAD MADE A FINAL DETERMINATION, A STATE OF AFFAIRS WHICH IT IS OBVIOUSLY DESIRABLE THAT WE SHOULD AVOID IF AT ALL POSSIBLE.

THIS APPLICATION IS ACCORDINGLY DISMISSED, BUT WITHOUT PREJUDICE TO THE RIGHT OF THE LATHERS UNION TO FILE A NEW APPLICATION AFTER THE JUPISDICTIONAL DISPUTES COMMISSION HAS ISSUED ITS FINAL DETERMINATION IN THIS MATTER. IT WAS SUGGESTED TO US THAT THE JURISDICTIONAL DISPUTES COMMISSION MIGHT TAKE THE POSITION THAT IT WOULD NOT RECONSIDER AN INTERIM ORDER WHERE THE WORK IN QUESTION HAS BEEN COMPLETED. NO AUTHORITY FOR THIS STATEMENT WAS CITED TO US. HOWEVER, IF THAT SHOULD PROVE TO BE THE CASE, OUR DISMISSAL OF THIS APPLICATION IS NOT TO PREJUDICE A REQUEST BY THE LATHERS UNION FOR RECONSIDERATION BY THIS BOARD OF THIS DECISION.

11226-65-M: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. RAMSAY INDUSTRIES LIMITED (RESPONDENT) AND BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLASS WORKS SECTION OTTAWA LOCAL 200 (INTERVENER).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: John Nelligan, M. McKenny and A. Lalonde for the Applicant; J. W. Touhey and E. Pranke for the respondent; and D. Cairns and G. Bellemare for the intervener.

DECISION OF THE BOARD: (FEBRUARY 25, 1966).

This is an application under section 79 of The Labour Relations Act for an order declaring that the certificate granted to the applicant, the United Brotherhood of Carpenters and Joiners of America Local Union 93, hereinafter referred to as "Local 93", includes all employees of the respondent, Ramsay Industries Limited, hereinafter referred to as "Ramsay", engaged in the installation of windows and that such employees do not fall within the certificate of the Board subsequently issued to the intervener, the Brotherhood of Painters, Decorators and Faperhangers of America, Glass Works Section Ottawa Local 200, hereinafter referred to as "Painters, Local 200". In effect, the applicant is asking the Board to vary its original decision and certificate.

The certificate in Question certifies Local 93 as bargaining agent for all carpenters and carpenters' apprentices in a certain defined area, with exceptions not here material. The certificate is dated March 3, 1965 and was issued under the construction industry sections of The Labour Relations Act. The decision of the Board, also dated March 3, 1965, recites the fact that Ramsay failed to file a reply, a list of employees and specimen signatures within the time fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. No other trade union intervened in the proceedings and employees did not file objections. The Board decision was accordingly based on the materials filed by Local 93, which materials were in no way challenged by anyone.

Subsequent to the issuing of the certificate, Ramsay filed a reply in which, <u>inter alia</u>, it was alleged that it had entered into a collective agreemen with Painters, Local 200 affecting employees covered by the certificate issued to Local 93. Subsequent to this late filing, Painters, Local 200 filed an intervention making the same claim. The matter was accordingly listed for hearing to consider the Board's decision in the light of the allegations contained in the late reply and the late intervention. The **only** issue considered by the Board at the hearing was the question as to whether or not the collective agreement alleged to have been in effect at the time Local 93 filed its application was in fact a bar to that application. In written reasons dated March 24, 1965, the Board held that the agreement was not a bar and accordingly found no justification for varying or revoking its decision of March 3, 1965.

ON MARCH 25, 1965 THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, THE INTERNATIONAL THAT IS AND NOT ANY LOCAL THEROF, APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF RAMSAY WORKING IN OR OUT OF OTTAWA. EASTVIEW AND THE ADJOINING MUNICIPALITIES SAVE AND EXCEPT NON-WORKING FOREMEN, OFFICE STAFF AND THOSE EMPLOYEES COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3. 1965. THE AREA SOUGHT DIFFERED FROM THAT GRANTED IN THE CERTIFICATE TO LOCAL 93 WHICH INCLUDED THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBORD TOWNSHIP). RUSSELL AND PRESCOTT. PAINTERS, LOCAL 200 INTERVENED IN THESE PROCEEDINGS AND SOUGHT CERTIFICATION FOR GLAZIERS, GLASSWORKERS AND HELPERS, WORKING IN AND OUT OF RAMSAY'S PREMISES IN OTTAWA. THESE APPLICATIONS FOR CERTIFICATION WERE NOT MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. A DIVISION OF THE BOARD CONSTITUTED DIFFERENTLY FROM THAT WHICH HEARD THE EARLIER CASE ORDERED A REPRESENTATION VOTE ON APRIL 14, 1965 BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND PAINTERS, LOCAL 200 AMONG THE EMPLOYEES OF RAMSAY IN A BARGAINING UNIT CONSISTING OF ALL EMPLOYEES OF RAMSAY WORKING IN OR OUT OF OTTAWA AND EASTVIEW SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3, 1965 ISSUED TO LOCAL 93. PAINTERS, LOCAL 200 WON THE REPRESENTATION VOTE AND THE BOARD IN ITS CERTIFICATE DATED MARCH 17, 1965 CERTIFIED THAT UNION AS THE BARGAINING AGENT OF ALL EMPLOYEES OF RAMSAY INDUSTRIES WORKING IN OR OUT OF OTTAWA AND EASTVIEW SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FORE-MAN, OFFICE STAFF AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED MARCH 3, 1965 ISSUED TO LOCAL 93.

IN THE INTIAL APPLICATION FILED BY LOCAL 93 THAT UNION ASSERTED THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE FOUR PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT IN THE CARGAINING UNIT WHICH THE SAID UNION CLAIMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. HOWEVER THE UNION SUBMITTED IN SUPPORT OF ITS APPLICATION MEMBERSHIP EVIDENCE FOR SIX EMPLOYEES. IT WILL BE REMEMBERED THAT RAMSAY FAILED TO FILE A REPLY OR A LIST OF EMPLOYEES OR SPECIMEN SIGNATURES FOR EMPLOYEES WITHIN THE TIME LIMIT PRESCRIBED BY THE ACT AND THE BOARD'S RULES OF PROCEDURE. RAMSAY SEEKS TO CHALLENGE THE MAJORITY POSITION OF LOCAL 93 AS AT FEBRUARY 22, 1965, THE DATE OF THE MAKING OF THE INITIAL APPLICATION JUST AS, AT THE HEARING HELD ON FEBRUARY 3, 1966, IT SOUGHT TO INTRODUCE EVIDENCE ALLEGING DURESS ON THE PART OF LOCAL 93 IN OBTAIN-ING ITS EVIDENCE OF MEMBERSHIP. AT THAT HEARING THE BOARD RULED AGAINST ADMITTING EVIDENCE OF THE ALLEGED DURESS ON THE GROUND THAT RAMSAY HAD KNOWLEDGE OF THIS EVIDENCE MANY MONTHS PRIOR TO THE HEARING IN QUESTION AND IT WAS THEN TOO LATE TO PERMIT THE INTORDUCTION OF SUCH EVIDENCE. THE PRESENT CHALLENGE TO THE MAJORITY POSITION OF LOCAL 93 SHOULD PROBABLY BE TREATED IN THE SAME FASHION AS THE ALLEGED EVIDENCE OF DURESS. EVIDENCE WAS, HOWEVER, LED BEFORE THE Examiner on this question and we have accordingly considered the EVIDENCE BEFORE US ON THIS POINT. !T WOULD APPEAR THAT THERE WERE ELEVEN EMPLOYEES OF RAMSAY EMPLOYED ON FEBRUARY 22, 1965. WITHOUT DECIDING WHETHER AMIE GROULX DOES OR DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND THEREFORE ASSUMING THAT HE WOULD BE INCLUDED IN THE BARGAINING UNIT, WE ARE SATISFIED THAT THE BOARD'S FINDING IN ITS DECISION OF MARCH 3, 1965 THAT "MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE" OUGHT NOT TO BE VARIED OR REVOKED. IN REACHING THIS CONCLUSION WE HAVE TAKEN INTO ACCOUNT THE FACT THAT THREE PERSONS, NAMELY, HAUNER, DUFAULT AND ROBERTS WERE INSTALLING GLASS IN FRAMES ON THE DATE OF THE MAKING OF THE APPLICATION.

There are several features of the application made by the United Brotherhood of Carpenters and Joiners of America on March 25, 1965 that must be noted. In the first place it has been established to our satisfaction that the membership evidence relied on by the United Brotherhood on that application consisted of all the membership evidence filed by Local 93 in its application of February 22, 1965, together with evidence of membership on behalf of two additional persons. In the second place it is clear that the majority of the employees who voted in the representation vote directed by the Board on the second application were persons claimed by Local 93 as members in the first application. The result of that vote was as follows: one ballot marked in favour of the applicant, United Brotherhood of Carpenters and Joiners of America, six ballots marked in favour of the intervener, Painters, Local 200 and one ballot segregated. In view of the result of the vote it was not necessary to count the segregated ballot.

WE WERE INFORMED BY COUNSEL FOR THE PRESENT APPLICATION THAT IT WAS THE INTENTION OF THE UNITED BROTHERHOOD, ON THE SECOND APPLICATION, TO SEEK CERTIFICATION FOR THOSE EMPLOYEES WHO WERE NOT COVERED BY THE ORIGINAL CERTIFICATE ISSUED TO LOCAL 93. THE EXPLANATION ADVANCED WAS THAT THE CERTIFICATE GRANTED

TO LOCAL 93 COVERED ONLY EMPLOYEES WHO FELL WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THAT RAMSAY HAD EMPLOYEES WHO DID NOT FALL UNDER THOSE PROVISIONS AND THAT THE SECOND APPLICATION WAS ONLY INTENDED TO INCLUDE SUCH EMPLOYEES. CONSEQUENTLY THE APPLICATION WAS NOT MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. IT IS NOT FOR THIS DIVISION OF THE BOARD TO SAY WHAT WAS INTENDED TO BE INCLUDED IN THE CERTIFICATE ISSUED TO FAINTERS, LOCAL 200, OTHER THAN TO NOTE THAT IT SPECIFICALLY EXCLUDED EMPLOYEES COVERED BY THE CERTIFICATE ISSUED TO LOCAL 93.

IN DUE COURSE, FOLLOWING THE ISSUANCE OF THE SECOND CERTIFICATE, RAMSAY REGAN BARGAINING WITH BOTH LOCAL 93 AND PAINTERS. LOCAL 200, AND EVENTUALLY A COLLECTIVE AGREEMENT WAS MADE BETWEEN RAMSAY AND PAINTERS, LOCAL 200 ON MAY 21, 1965. IN ARTICLE II OF THAT AGREEMENT RAMSAY "RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL HOURLY RATED EMPLOYEES SAVE AND EXCEPT EXECUTIVE OFFICERS, OFFICE STAFF, PLANT GUARDS, FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN". IT WILL BE NOTED THAT THERE IS NO EXCLUSION OF PERSONS COVERED BY THE CERTIFICATE ISSUED TO LOCAL 93. THIS, NO DOUBT, RESULTED FROM THE FACT THAT, RIGHTLY OR WRONGLY, RAMSAY TOOK THE POSITION THAT IT HAD NO CARPENTERS IN ITS EMPLOY. IT STEADFASTLY MAINTAINED THIS POSITION DURING BARGAINING WITH LOCAL 93. IN DUE COURSE (WE WERE NOT FURNISHED WITH THE MATERIAL DATE) CONCILIATION PROCEDURES UNDER THE LABOUR RELATIONS ACT WERE EXHAUSTED AND LOCAL 93 BECAME ENTITLED TO CALL A STRIKE UNDER THE PROVISIONS OF THAT ACT. THE PRESENT APPLICATION UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WAS MADE ON DECEMBER 22, 1965. IT WOULD APPEAR THAT AFTER THE FILING OF BUT BEFORE THE FIRST HEARING IN THIS APPLICATION TOOK PLACE, LOCAL 93 EITHER CALLED A STRIKE OR AT LEAST CAUSED PICKETS TO BE PLACED ON PREMISES WHERE RAMSAY EMPLOYEES WERE WORKING. WE WERE INFORMED BY BOTH THE RESPONDENT AND THE INTERVENER THAT NONE OF RAMSAY S EMPLOYEES WENT ON STRIKE AND THAT ALL OF THEM CROSSED THE PICKET LINES SET UP BY LOCAL 93.

THE BOARD HAS GIVEN MUCH ANXIOUS CONSIDERATION TO THE ISSUES RAISED IN THE PRESENT APPLICATION. WHILE UNDOUBTEDLY EACH OF THE PARTIES TO THE APPLICAT-ION HAS TROUBLESOME PROBLEMS IT IS OUR VIEW THAT MOST OF THE DIFFICULTIES HAVE BEEN CREATED BY THE ACTIONS OF THE PARTIES THEMSELVES. IN ESSENCE THE CORE OF THE PROBLEM WAS THE CONFLICT OF JURISDICTIONAL CLAIMS OF LOCAL 93 AND PAINTERS, LOCAL 200. ADDED TO THIS WAS THE FAILURE OF RAMSAY AND PAINTERS, LOCAL 200 TO CONTEST THE INITIAL APPLICATION MADE BY LOCAL 93. IN ADDITION, LOCAL 93 COULD HAVE SUPPLIED THE BOARD WITH MORE INFORMATION THAN IT DID IN MAKING ITS INITIAL APPLICATION. FURTHER, RAMSAY APPEARS TO HAVE GIVEN A VERY MUCH NARROWER INTERPRETATION TO THE WORDS "CARPENTERS AND CARPENTERS" APPRENTICES" AS THEY APPEAR IN THE BOARD'S CERTIFICATE DATED MARCH 3, 1965 THAN IS NECESSARILY IMPLIED IN THOSE TERMS WHEN USED BY THE BOARD IN DESCRIBING A BARGAINING UNIT. THE RESULT OF THE VOTE ON THE SECOND APPLICATION UNDOUBTEDLY SERVED ONLY TO HEIGHTEN THE CONFUSION WHICH SEEMS TO HAVE EXISTED IN THE MINDS OF ALL PARTIES FROM THE OUTSET OF THE APPLICATION MADE BY LOCAL 93. IN FACT THE BOARD IN ITS DECISION OF MARCH 24, 1965 NOTED THAT PROBLEMS MIGHT ARISE AND INVITED THE PARTIES TO COME BACK TO THE BOARD FOR CLARIFICATION SHOULD DIFFICULTIES ARISE DURING THE COURSE OF NEGOTIATIONS FOR A COLLECTIVE AGREEMENT AND THIS INVITATION was extended even before there was a second application by the United Brother-HOOD OF CARPENTERS AND JOINERS OF AMERICA. DESPITE THIS, RAMSAY DID NOTHING AND LOCAL-93 WAITED UNTIL THE BARGAINING PROCESS WAS COMPLETED AND IT WAS IN A STRIKE PUSITION BEFORE TAKING ANY ACTION.

AS WAS POINTED OUT ABOVE, THE REAL PROBLEM HERE IS ONL OF COMPETING JURISDICTIONAL CLAIMS. UNQUESTIONABLY THIS WAS RECOGNIZED BY ALL PARTIES EVEN AS EARLY AS THE FIRST APPLICATION OF LOCAL 93. NONE OF THE PARTIES SAW FIT TO MAKE USE OF THE PROVISIONS OF SECTION 66 OF THE LABOUR RELATIONS ACT WHICH WERE ENACTED FOR THE EXPRESS PURPOSE OF PROVIDING A SOLUTION TO SUCH PROBLEMS. AGAIN, NO ATTEMPT WAS MADE BY EITHER OF THE TWO UNIONS INVOLVED TO INVOKE THE PROCEDURES OF THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES. IT IS OUR CONSIDERED OPINION THAT THE ONLY PRACTICAL SOLUTION TO THE PROBLEMS WHICH THE PARTIES ARE FACING IS THE INVOCATION OF A PROCEDURE WHICH WILL DETERMINE THE JURISDICTIONAL DISPUTE. THEREFORE, WE HAVE CONCLUDED THAT IN ALL THE CIRCUMSTANCES OF THE PRESENT CASE WE MUST DENY THE REQUEST OF THE APPLICANT AND THE VARIOUS COUNTER REQUESTS MADE BY RAMSAY AND PAINTERS, LOCAL 200. It is our view that the Board's decison of March 3, 1965 should not be VARIED PENDING THE SETTLEMENT OF THE JURISDICTIONAL DISPUTE WHICH, AS WE HAVE SAID, LIES AT THE ROOT OF THE PARTIES PROBLEMS. IT IS NOTED THAT IF ANY PARTY SEES FIT TO INVOKE THE PROVISIONS OF SECTION 66 OF THE LABOUR RELATIONS ACT, PROVISION IS MADE IN CERTAIN CIRCUMSTANCES FOR AN APPEAL TO THIS BOARD.

IN THE RESULT, THEREFORE, THE APPLICATION IS DISMISSED.

11292-65-M: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. UNITED CO-OPERATIVES OF ONTARIC (OWEN SOUND BRANCH) (RESPONDENT).

BEFCRE: J. H. Brown, Deputy Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: C. EVANS FOR THE APPLICANT, J. S. NUTTALL AND R. HENNIGAR FOR THE RESPONDENT.

DECISION OF THE BOARD: (FEBRUARY 28, 1966).

- THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PARTY HAS NOT BEEN NAMED AS RESPONDENT IN THIS APPLICATION. THE BOARD ACCORDINGLY, PURSUANT TO SECTION 78 OF THE ACT, DIRECTS THAT THE NAME GREY FARMERS CO-OPERATIVE (OWEN SOUND) BE STRUCK FROM THE STYLE OF CAUSE AND SUBSTITUTED BY THE NAME UNITED CO-OPERATIVES OF ONTARIO (OWEN SOUND BRANCH).
- 2. THE APPLICANT PURSUANT TO SECTION 79(2) OF THE ACT IS REQUESTING THAT THE BOARD DETERMINE WHETHER KENNETH BARFOOT WHO IS EMPLOYED IN THE OCCUPATIONAL CLASSIFICATION OF FUEL TRUCK DRIVER-SALESMAN IS AN EMPLOYEE OF THE RESPONDENT FOR PURPOSES OF THE ACT.
- 3. THE RESPONDENT ACQUIRED THE BUSINESS OF GREY FARMERS CO-OPERATIVE
  ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) ON JANUARY 1ST, 1966
  AND IS THE SUCCESSOR EMPLOYER OF THE EMPLOYEES OF THE ASSOCIATION. BY VIRTUE
  OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE ASSOCIATION COVERING

"all of its employees at Owen Sound save and except foremen, persons above the rank of foremen, office and sales staff and those who are regularly employed for less than 24 hours per week" the applicant continues to hold the bargaining rights for the former employees of the Association in the bargaining unit as above described. The applicant and the respondent have met and are bargaining with a view to making a collective agreement.

- During the course of bargaining a question has arisen with respect to the status of Kenneth Barfoot who is employed as a Fuel Truck Oriver-Salesman. The applicant asserts that on the basis of Barfoot's duties and responsibilities he is an employee within the meaning of the Act, whereas the respondent takes the position that Barfott exercises managerial functions within the meaning of the Act. The respondent also claims that Barfoot has sales functions which exclude him from the bargaining unit as described.
- 5. The Board in the Canadian Car Fort William Division Hawker Siddley Canada Ltd. Case Board File No. 10386-65-M recognized that a determination of the Question as to whether a person is covered by a collective agreement is properly a matter for a board of arbitration. At the same time, however, the Board found that the Question as to whether a person is an employee falls within the jurisdiction of the Board under section 79 (2) of the Act. In the instant case a Question has arisen between the applicant and the respondent during the course of bargaining for a collective agreement as to whether Kenneth Barfoot is an employee for the purposes of the Act. The Board accordingly finds that the applicant has brought itself within the provisions of section 79(2) and is entitled to the relief which it is seeking. We would mention that whether or not Barfoot may be excluded from the bargaining unit as described on the basis of his sales function does not fall within the purview of this application.
- 6. Mr. A. A. Morrow, Examiner, accordingly is authorized to inquire into and report to the Board on the duties and responsibilities of the Fuel Truck Driver-Salesman.

# STATISTICAL TABLES FOR FEBRUARY 1966

TABLE I

# APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

				BER FILED
		FEBRUARY 1966	1965-66	of Fiscal Year 1964-65
1.	CERTIFICATION	66	883	851
11.	DECLARATION TERMINATING BARGAINING RIGHTS	16	* 66	97
111.	DECLARATION OF SUCCESSOR	1	25	7
IV.	Declaration That Strike Unlawful	2	48	35
٧.	Declaration That Lock- Out Unlawful	-	4	5
۷1.	CONSENT TO PROSECUTE	6	89	66
VII.	Complaint of Unfair Practice in Employment (Section 65)	6	96	143
•111V	MISCELLANEOUS	3	48	48
	TOTAL	100	1259	1252

### TABLE 11

#### HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number Number		
	FEBRUARY 1966	1st 11 Mths or 1965-66	F FISCAL YEAR 1964-65
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	63	1043	1042

TABLE III

# APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

			Number	DISPOSED OF
		FEBRUARY 1966	1st 11 Mths of 1965-66	
1.	CERTIFICATION	64	890	828
11.	Declaration Terminating Bargaining Rights	3	56	100
111.	Declaration of Successor Status	9	28	7
IV.	DECLARATION THAT STRIKE Unlawful	. 5	48	35
V.	DELCARATION THAT LOCK- OUT UNLAWFUL	-	4.	5
VI.	CONSENT TO PROSECUTE	11	86	67
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	18	157
V111.	MISCELLANEOUS TOTAL	108	98	28 1227

TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### BY TYPE AND DISPOSITION

		NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*			
		FEBRUARY 1966	lsт 11 Мтнs 1965-66	FISCAL YR. 1964-65	FEBRUARY 1966	lsт 11 Мтнs 1965-66	FISCAL YR. 1964-65	
•	CERTIFICATION							
	GRANTED DISMISSED WITHDRAWN TOTAL	48 12 4 64	659 156 _75 890	603 148 77 	1082 587 64 1733	17772 26838 <u>3476</u> 48086	17502 6580 2545 26627	
•	TERMINATION OF BARGAINING							
	RIGHTS					24/4	/2/	
	Granted Dismissed Withdrawn	1 2	26 25 	48 49 	130 	1565 765 <u>251</u>	615 1175 <u>92</u>	
	TOTAL	3	56	100	262	2581	1882	

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

# TABLE IV

# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

111.	DECLARATION THAT STRIKE		NUMBER (FEBRUARY 15-1966	OF APPLICAT T 11 MTHS F 1965-66	
	Unlawful Granted Dismissed Withdrawn	TOTAL	1 4 5	8 4 <u>26</u> <u>48</u>	13 15 17 25
1V.	DECLARATION THAT LOCKOUT UNLAWFUL  GRANTED DISMISSED WITHDRAWN	TOTAL _;	- - -	- - -	. (° 1 1 _3
٧.	CONSENT TO PROSECUTE	TOTAL		4	
	GRANTED Dismissed Withdrawn	TOTAL	2 1 8 11	31 15 40 86	13 17 <u>37</u>

TABLE V

# REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

# OF BY THE ONTARIO LABOUR RELATIONS BOARD

			NUMBER OF VO	
		FEBRUARY 1966	1st 11 MtHs 1965-66	FISCAL YEAR. 1964-65
CERTIFICATION AFTER VOTE*				
PRE-HEARING VOTE POST-HEARING VOTE BALLOTS NOT COUNTED		1 3 -	24 31 -	21 31 -
DISMISSED AFTER VOTE  PRE-HEARING VOTE  POST-HEARING VOTE  BALLOTS NOT COUNTED	TOTAL	- - 8	6 36 3 100	8 51 1 112

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

		FEBRUARY 1966	Number of Vote 1st 11 Mths of 1965-66	
*RESPONDENT UNION SUCCESSFUL RESPONDENT UNION UNSUCCESSFUL			1 20	12
	TOTAL	=	21	12

<sup>\*|</sup>N TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



ONTARIO LABOUR RELATIONS BOARD



# CASE LISTINGS MARCH 1966

			PAGE
1.	CERTIFICATION		
	(B) APPLICATIO	AGENTS CERTIFIED NS DISMISSED NS WITHDRAWN	845 861 866
2.	APPLICATIONS FOR	Declaration Terminating	
	BARGAINING RIG	нтѕ	867
3.	Application for Status	Declaration of Successor	869
4.	Applications for	DECLARATION THAT STRIKE	
7.0	UNLAWFUL	DECEMBELLON THAT STATE	869
5-	APPLICATIONS FOR	CONSENT TO PROSECUTE	870
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	LABOUR PRACTIC	Ε)	870
7.	Applications for Section 79(2)	DETERMINATION UNDER	871
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9.	Applications for Board's Decisi	Reconsideration of on	871
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		THE UNIVERSITY OF GUELPH	880
	10999-65-R:	ATLANTIC PACKAGING COMPANY	881
	11197-65-R:	CAMPBELL SOUP COMPANY LTD.	885
	11232-65-R:	BASIC STRUCTURE STEEL FABRICATORS LIMITED	888 890
	11299-65-R:	QUEEN'S BAKERY	892
	11369-65-R:	New Surpass Petro-Chemicals Limited	894
	11377-65-R:	THE WARNOCK HERSEY COMPANY LTD. THE WARNOCK HERSEY COMPANY LTD.	895
	11378-65-R: 11379-65-R:	North American Inspection Services	07.
	11)/9-0)-4:	LIMITED	896
	77/172 ( C D.	ONTARIO STEEL PRODUCTS COMPANY LIMITED	397
	11413-65-R: 11415-65-R:	20th Century Masonry Company	899
	11427-65-R:	THUNDER BAY HARBOUR IMPROVEMENTS LIMITED	900
	11433-65-R:	OLYMPIA HOME BAKERY	901
	11435-65-R:	MOLLENHAUER CONTRACTING COMPANY LIMITED	901
	11445-65-R:	KEMP PRODUCTS LIMITED	967
	11455-65-R:	GENERAL IMPACT EXTRUSIONS (MANUFACTURING	
		LTD.	200

11475-65-R: 11525-65-R:	INDIAN RESIDENTIAL SCHOOL, FORT FRANCES, ONTARIO, ADMINISTERED FOR THE INDIAN AFFAIRS BRANCH OF THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION, GOVERNMENT OF CANADA, BY THE OBLATE FATHERS ATCO INDUSTRIES LTD.	905 905
11535-65-R: 11540-65-R:	LUX WHITMORE PAINTING COMPANY	906 907
TERMINATION		
11335-65-R: 11386-65-R:	Parry Sound General Hospital Pawson's (Sudbury) LimitedAND-	908
11387-65-R:	Pawson's (Sudbury) Limited	
11388-65-R:		
11389-65-R:	Pawson's (SUDBURY) LIMITED	
113 <b>90-</b> 65-R:	Pawson's (Sudbury) Limited	
11391-65-R:	Pawson's (Sudbury) Limited	
11392-65-R:	Pawson's (Sudbury) Limited	
11393-65-R:	Pawson's (Sudbury) Limited	
	Pawson's (Sudbury) Limited Fletcher Tile Limited Moyer Sand (1965) Limited	910 912 913
SECTION 65 10948-65-U:	Eastwood Park Hotel and Robert Laurent	
11000-65-U: 10968-65-U:	EASTWOOD PARK HOTEL AND ROBERT LAURENT CANADIAN DREDGE AND DOCK CO. LIMITED, THE PORTER COMPANY LIMITED (A JOINT	916
	Venture)	918
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11094-65-R: GUILDLINE INSTRUMENTS LTD.
11438-65-R: THE POST PRINTING COMPANY LTD., A

DIVISION OF THOMSON NEWSPAPERS LIMITED

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## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

#### DURING MARCH 1966

#### BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

10070-64-R: International Brotherhood of Pulp Sulphite and Paper Mill Workers (Applicant) v. Provincial Paper Limited Thorold Division (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THOROLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MAINTENCANCE PLANNER, PRODUCTION PLANNER, PRODUCT QUALITY CONTROL SUPERVISOR, CONFIDENTIAL SECRETARY TO THE MILL MANAGER, EMPLOYMENT SUPERVISOR, CONFIDENTIAL SECRETARY TO THE EMPLOYMENT SUPERVISOR, SUPERVISORS IN TRAINING, NURSE, WATCHMEN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AND ITS LOCAL 290." (61 EMPLOYEES IN THE UNIT).

 $\frac{10812-65-R}{\text{University}}\text{ of Guelph (Respondent) v. The Civil Service Association of Ontario (inc.) (Intervener).}$ 

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT ITS POWER PLANT AND AVION PATHOLOGY BUILDING IN GUELPH, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 880 ).

11229-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Quigley Construction Company Limited (Respondent).

UNIT: "ALL CONSTRUCTION EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11269-65-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TELCH TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) v. BABCOCK-WILCOX & GOLDIE-MCCULLOCH LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON THE WATERLOO UNIVERSITY ENGINEERING TRAINING PROGRAMME AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (37 EMPLOYEES IN THE UNIT).

11270-65-R: Local Union 120 of the International Brotherhood of Electrical Workers, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Advanced Wire Die Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

11276-65-R: Local 530 of the International Brotherhood of Electrical Workers, A.F.L.-C...O.-C.L.C. (Applicant) v. Delta Electric Services (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT SARNIA AND WALLACEBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. (10 EMPLOYEES IN THE UNIT).

11336-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 141 (APPLICANT) v. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220 (INTERVENER).

UNIT: "ALL ROUTE SALESMEN EMPLOYED BY THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN AND SERVICE PERSONNEL AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (24 EMPLOYEES IN THE UNIT).

11342-65-R: Local Union 548 of the International Brotherhood of Electrical Workers AFL-CIO-CLC. (Applicant) v. Elora Hydro Electric Commission (Respondent).

Unit: "all employees of the respondent at Elora, save and except office staff".  $\overline{\text{(3 employees in the unit)}}$ .

11345-65-R: FOOD HANDLERS LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT STORE DIVISION IN HAMILTON SAVE AND EXCEPT THE BOOKKEEPER, STORE OPERATIONS MANAGER, PERSONNEL OFFICER, SELLING MANAGERS, PERSONS ABOVE THE RANK OF SELLING MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (110 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11346-65-R: Food Handlers Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Steinberg!s Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS DEPARTMENT STORE DIVISION IN METROPOLITAN TORONTO SAVE AND EXCEPT THE BOOKKEEPER, STORE OPERATIONS MANAGER, PERSONNEL OFFICER, SELLING MANAGERS, PERSONS ABOVE THE RANK OF SELLING MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (111 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11369-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. NEW SURPASS PETROCHEMICALS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (13 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 892).

11371-65-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C. (APPLICANT) v. Collegiate and Vocational Institute Board of the Township of Teck (Respondent).

<u>Unit</u>: "all employees of the respondent in the Township of Teck, save and except superintendent, persons above the rank of superintendent, professional teaching staff and office staff." (17 employees in the unit).

11372-65-R: Local Union 636 of the International Brotherhood of Electrical Workers AFL-CIO-CLC (Applicant) v. Acousticon Dictograph Company of Canada Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE INSTALLATION, SERVICE AND ASSEMBLY DEPARTMENTS OF THE COMMUNICATIONS DIVISION OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11375-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE BOARD OF EDUCATION FOR THE TOWNSHIP OF YORK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF YORK, SAVE AND EXCEPT SUPERINTENDENTS, SUPERVISORS OF CARETAKERS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERINTENDENT, SUPERVISOR OF CARETAKERS OR FOREMAN, PROFESSIONAL TEACHING STAFF, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (166 EMPLOYEES IN THE UNIT).

11395-65-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 141 (Applicant) v. Rocket Cartage & Delivery (London) Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(4 EMPLOYEES IN THE UNIT).

11399-65-R: Canadian Union of Public Employees (Applicant) v. The Board of Health - St. Catharines Lincoln Health Unit (Respondent).

UNIT: "ALL OFFICE EMPLOYEES AND PUBLIC HEALTH INSPECTORS OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT CHIEF INSPECTOR, CHIEF CLERK, PERSONS ABOVE THE RANKS OF CHIEF INSPECTOR AND CHIEF CLERK, SECRETARY-TREASURER, PUBLIC HEALTH NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE BASIS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11404-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Coady Store Fixtures & Equipment Co. Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11406-65-R: Hotel & Restaurant Employees' & Bartenders' International Union, Local 197 (Applicant) v. British Imperial Veterans Assoc. of Hamilton. Inc. (Respondent).

UNIT: "ALL TAPMEN AND BARTENDERS OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11415-65-R: International Hod Carriers Building and Common Labourers Union of America, Local 506 (Applicant) v. 20th Century Masonry Company (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 899).

11417-65-R: NURSES' ASSOCIATION PEEL COUNTY HEALTH UNIT (APPLICANT) v. BOARD OF HEALTH OF THE PEEL COUNTY HEALTH UNIT (RESPONDENT).

 $\frac{\text{UNIT}}{\text{SAVE}}$  "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT ASSISTANT SUPERVISORS OF NURSES AND PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR OF NURSES." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11421-65-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220, B. S. E. I. U. - A.F. of L., C.I.O. - C.L.C. (Applicant) v. Meaford General Hospital (Respondent) v. Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MEAFORD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT)

11426-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 493 (APPLICANT) v. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(21 EMPLOYEES IN THE UNIT).

11427-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Thunder Bay Harbor Improvements Limited (Respondent) v. Lumber & Sawmill Workers Union - Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY ENGAGED-IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 900 ).

11428-65-R: POL BATTERIES EMPLOYEES' ASSOCIATION (APPLICANT) v. ELTRA OF CANADA LIMITED (RESPONDENT) v. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A CERTIFICATE ISSUED BY THE BOARD TO THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 DATED MARCH 10th, 1966." (24 EMPLOYEES IN THE UNIT).

11429-65-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. MCKINNEY SKILLCRAFT LIMITED (RESPONDENT).

<u>Unit</u>: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (49 EMPLOYEES IN THE UNIT).

11430-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. W. S. Brass Motor Bodies Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(57 EMPLOYEES IN THE UNIT).

11431-65-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 158, N.C.C.L. (APPLICANT) v. FREEDMAN WHOLESALE LTD. (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (72 EMPLOYEES IN THE UNIT).

11432-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. SUTTON PLACE (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

11433-65-R: BAKERY & CONFECTIONERY WORKERS! INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. OLYMPIA HOME BAKERY (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHOP LOCATED IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, OFFICE AND SALES STAFF, DRIVER-SALESMEN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 901).

11435-65-R: United Brotherhood of Carpenters & Joiners of America Local Union # 1071 (Applicant) v. Mollenhauer Contracting Company Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 902).

11437-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. ELTRA OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF VAUGHAN," (3 EMPLOYEES IN THE UNIT).

11438-65-R: WINDSOR TYPOGRAPHICAL UNION, No. 553 (APPLICANT) v. THE POST PRINTING COMPANY LTD., A DIVISION OF THOMSON NEWSPAPERS LIMITED (LEAMINGTON) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COMPOSING ROOM, PRESS ROOM AND BINDERY DEPARTMENT AT LEAMINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

11439-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Modern Chalkboards & Architectural Specialties Ltd. (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(6 EMPLOYEES IN THE UNIT).

11443-65-R: Local Union 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sutton Place (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11444-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Oshawa Engineering & Welding Company Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(56 EMPLOYEES IN THE UNIT).

11446-65-R: Local Union 804, International Brotherhood of Electrical Workers, AFL-CIO-CLC (Applicant) v. Ray Electric Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." ((10 EMPLOYEES IN THE UNIT).

THE AREAS PROPOSED BY BOTH THE APPLICANT AND THE RESPONDENT CONFLICT WITH OTHER AREAS GRANTED BY THE BOARD. THE AREA NORMALLY GRANTED BY THE BOARD IS IN CITIES OF KITCHENER AND WATERLOO AND ALL OF THE TOWNSHIP OF WATERLOO EXCEPTING

THAT PORTION OF TOWNSHIP LYING SOUTH OF A LINE COMMENCING FROM THE JUNCTION OF WATERLOO WELLINGTON COUNTIES BOUNDARY AND 13A KITCHENER SUBURBAN ROAD; THENCE ALONG 13A KITCHENER SUBURBAN ROAD TO ITS JUNCTION WITH COUNTY ROAD 13; THENCE TRAVELLING IN A SOUTH WESTERLY DIRECTION ALONG COUNTY ROAD 13 TO ITS JUNCTION WITH 401 HIGHWAY; THENCE TRAVELLING ALONG HIGHWAY 401 TO ITS JUNCTION WITH COUNTY ROAD No. 6; THENCE ALONG COUNTY ROAD 6 WESTERLY TO THE END OF WATERLOO TOWNSHIP. HAVING REGARD TO THE COLLECTIVE BARGAINING PRACTICE OF VARIOUS TRADE UNIONS AND EMPLOYERS, IT IS OBVIOUS THAT THIS LAST DEFINED AREA IS NO LONGER APPROPRIATE. AFTER DUE CONSIDERATION THE BOARD HAS COME TO THE COUNTY OF WATERLOO.

11447-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 91 (APPLICANT) v. KEYSTONE CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."

(5 EMPLOYEES IN THE UNIT).

11450-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. AUTOMOTIVE HARDWARE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (105 EMPLOYEES IN THE UNIT).

11453-65-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) v. H. GERRITS, PLASTERING (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(8 EMPLOYEES IN THE UNIT).

11454-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. CROUSE-HINDE COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, OPERATING ENGINEERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (223 EMPLOYEES IN THE UNIT).

11455-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. General Impact Extrusions (Manufacturing) Ltd. (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (351 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSMENT PAGE 903).

11457-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Sutton Place (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11458-65-R: International Union of Doll & Toy Workers of the U.S.A. & Canada, Local 905 (Applicant) v. Dr. Ballard's Animal Foods Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (85 EMPLOYEES IN THE UNIT).

11459-65-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS! INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. DIANA SWEETS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

Unit: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 187 YONGE STREET IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (61 EMPLOYEES IN THE UNIT).

11462-65-R: United Brotherhood of Carpenters & Joiners of America Local Union #1071 (Applicant) v. Chemong Construction Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. (6 EMPLOYEES IN THE UNIT).

 $\frac{11466-65-R}{(Applicant)}$  v. United Brotherhood of Carpenters and Joiners of America, Local 1190 (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

11471-65-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 141 (APPLICANT) v. THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL ROUTE SALESMEN EMPLOYED BY THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN, SERVICE PERSONNEL AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

11473-65-R: INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. THE BORDEN CHEMICAL COMPANY (CANADA) 1962 LIMITED (RESPONDENT).

Unit: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CHEMISTS, ENGINEERS, LABORATORY TECHNICIANS, NURSES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED UNDER THE WATERLOO UNIVERSITY TRAINING PROGRAMME." (15 EMPLOYEES IN THE UNIT).

11478-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Writer Properties Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11491-65-R: United Steelworkers of America (Applicant) v. Niagara Structural Steel Company Limited (Respondent) v. International Association of Bridge, Structural and Ornamental Iron Workers Local Union 736 (Intervener).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FABRICATION PLANT AT ST.

CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE
AND SALES STAFF, AND EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS."

(162 EMPLOYEES IN THE UNIT).

11493-65-R: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (APPLICANT) v. SPINRITE YARNS & DYERS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LISTOWEL, SAVE AND EXCEPT ASSISTANT FOREMEN, ASSISTANT FORELADIES, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND ASSISTANT FORELADY, OFFICE AND SALES STAFF, LABORATORY PERSONNEL, QUALITY CONTROL PERSONNEL AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (325 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11495-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. T. F. Doughty Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." ( 12 EMPLOYEES IN THE UNIT).

11500-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Gerard Builders of North Bay Ltd. (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11501-65-R: United Brotherhood of Carpenters & Joiners of America, Local 2 486 (APPLICANT) v. John F. Seguin Limited (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF CHAMBERS, STRATHY, BRIGGS AND STRATHCONA IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

11502-65-R: International Hod Carriers Building and Common Labourers Union, Local 247 (Applicant) v. Art Laboratory Furniture Limited (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(3 EMPLOYEES IN THE UNIT).

11503-65-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. ROSS DIVISION, Midland-Ross of Canada Limited (Respondent).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(2 EMPLOYEES IN THE UNIT).

11505-65-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (APPLICANT) v. PARAMOUNT LABELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

11506-65-R: Local 280 of the Hotel & Restaurant Employees' and Bartenders' International Union. A.F.L.-C.I.O.-C.L.C. (Applicant) v. Centre Taverns Limited, carrying on business as Duffy's Tavern (Respondent).

UNIT: "ALL FULL TIME AND PART-TIME MALE AND FEMALE EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS BUSINESS WHICH IT CARRIES ON AT TORONTO AS TAPMEN BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11507-65-R: SHEET METAL WORKERS! INTERNATIONAL ASSOCIATION, A.F.L.-C.1.0., LOCAL UNION 269 (APPLICANT) v. CANADIAN JOHNS-MANVILLE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON AND FRONTENAC, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11508-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. CANADIAN BECHTEL LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11510-65-R: INTERNATIONAL LADIES' GARMENT WORKERS' UNION (APPLICANT) v. ELIZABETH ANN GOWNS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

11514-65-R: United Brotherhood of Carpenters & Joiners of America Local Union 93 (Applicant) v. Rideau River Homes (Respondent).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11516-65-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Esto Heating Company Limited (Respondent).

UNIT: "ALL PLUMBERS AND PLUMBERS! APPRENTICES, STEAMFITTERS AND STEAMFITTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

11518-65-R: International Woodworkers of America (Applicant) v. Bathurst Containers Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ART AND DIE DEPARTMENT STAFF, DESIGN DEPARTMENT STAFF, TECHNICAL AND DEVELOPMENT DEPARTMENT STAFF, INDUSTRIAL ENGINEERING DEPARTMENT STAFF, PRODUCTION SCHEDULERS, QUALITY CONTROL DEPARTMENT STAFF, WASTE CO-ORDINATORS, WATCHMEN, AND STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

11522-65-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 12-L TORONTO (APPLICANT) v. HOUSTON STANDARD PUBLICATIONS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11524-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. PLIBRICO (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(4 EMPLOYEES IN THE UNIT).

11525-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. ATCO INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS! APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 905).

11535-65-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA - LOCAL UNION 1891 (APPLICANT) v. LUX WHITMORE PAINTING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 906).

11540-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) v. FEDERAL TILE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 907).

11544-65-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 506 (Applicant) v. Mediterranean Construction Company (Respondent).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

11546-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. Schwenger Construction Limited (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPRATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

11564-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. Don La Fonte Excavating (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

#### CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

10999-65-R: THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. ATLANTIC PACKAGING COMPANY (RESPONDENT) v. PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

<u>Unit</u>: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND SALES STAFF." (120 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED			
VOTERS1 LIST			101
NUMBER OF PERSONS WHO CAST BALLOTS		98	
NUMBER OF BALLOTS SEGREGATED AND			
NOT COUNTED	3		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	59		
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF INTERVENER	36		

(SEE INDEXED ENDORSEMENT PAGE 881).

11277-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL.CIO.CLC. (APPLICANT) v. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN NORTH BAY AND THE TOWNSHIP OF WEST FERRIS, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT."

(56 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of Names of Persons on Revi	SED
VOTERS! LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	34
Number of Ballots Segregated and	
NOT COUNTED	1
Number of Ballots Marked IN FAVOUR	
OF APPLICANT	25
Number of Ballots Marked Against	
APPLICANT	8

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

#### No VOTE CONDUCTED

11133-65-R: The Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. H. Perron et Fils Limitee (Respondent). (35 employees).

11232-65-R: Basic Structure Steel Fabricators Employees Association (Applicant) v. Basic Structure Steel Fabricators Limited (Respondent). (18 employees).

(SEE INDEXED ENDORSEMENT PAGE 888).

11377-65-R: Local Union 2163 of the International Brotherhood of Electrical Workers (Applicant) v. The Warnock Hersey Company Ltd. (Respondent). (5 employees).

(SEE INDEXED ENDORSEMENT PAGE 894).

11378-65-R: Local Union 2163 of the International Brotherhood of Electrical Workers (Applicant) v. The Warnock Hersey Company Ltd. (Respondent). (3 employees).

(SEE INDEXED ENDORSEMENT PAGE 895 ).

11379-65-R: Local Union 2163 of the International Brotherhood of Electrical Workers (Applicant) v. North American Inspection Services Limited (Respondent) v. Employees (Objectors). (4 employees).

(SEE INDEXED ENDORSEMENT PAGE 896).

11411-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CHELMSFORD VALLEY DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (12 EMPLOYEES).

11412-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CHELMSFORD VALLEY DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (4 EMPLOYEES).

11414-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL 597 (APPLICANT) v. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

Unit: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

11425-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 (APPLICANT) v. Z. DEVUONO MASONRY CO. LTD. (RESPONDENT). (13 EMPLOYEES).

11434-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Central Bakery (Respondent) v. Group of Employees (Objectors). (10 employees).

11445-65-R: KEMP PRODUCTS EMPLOYEES ASSOCIATION (APPLICANT) v. KEMP PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (48 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 902).

11475-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. INDIAN RESIDENTIAL SCHOOL, FORT FRANCES, ONTARIO, ADMINISTERED FOR THE INDIAN AFFAIRS BRANCH OF THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION, GOVERNMENT OF CANADA, BY THE OBLATE FATHERS (RESPONDENT). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 905).

11496-65-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT)
v. DON LAFONTE EXCAVATING LTD. (RESPONDENT). (6 EMPLOYEES).

11511-65-R: Local Union # 1940, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Globe Furniture Company Limited (Respondent) v. International Woodworkers of America, Local 2-490 (Intervener). (25 employees).

11519-65-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. COMMERCIAL INTERIORS AND CABINETS LIMITED (RESPONDENT). (2 EMPLOYEES).

10605-65-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1747, affiliated with the Carpenters' District Council of Toronto and Vicinity (Applicant) v. Decor Dry Wall of Ontario Ltd. (Respondent) v. Wood, Wire & Metal Lathers International Union, Local 97 (Intervener)

10606-65-R: Wood Wire & Metal Lathers International Union, Local 97 (Applicant) v. Decor Dry Wall of Ontario Ltd. (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local Union 1747, affiliated with the

CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (INTERVENER).

(THE ABOVE TWO CASES ARE CONSOLIDATED)

UNIT: "ALL DRYWALL INSTALLERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(4 EMPLOYEES IN THE UNIT).

#### CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

11408-65-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America AFL-CIO-CLC (Applicant) v. Coca-Cola Ltd. (Respondent).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE
AND EXCEPT OFFICE STAFF, SPECIAL SALESMEN, FOREMEN AND PERSONS ABOVE THE RANK
OF SPECIAL SALESMAN OR FOREMAN." (34 EMPLOYEES).

Number of Names of Persons on Revised
voters' List 33

Number of Persons who cast ballots 33

Number of Ballots Marked in Favour
of Applicant 7

Number of Ballots Marked Against
Applicant 26

#### CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

11158-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) v. CANADA CATERING CO. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILLHAVEN FIBRES LIMITED, MILLHAVEN, SAVE AND EXCEPT CAFETERIA MANAGER AND PERSONS ABOVE THE RANK OF CAFETERIA MANAGER." (18 EMPLOYEES IN THE UNIT).

Number of Names of Persons on Revised
voters' List 16

Number of Persons who cast ballots 16

Number of ballots marked in favour
of applicant 7

Number of ballots marked against
applicant 9

11199-65-R: International Association of Machinists and Aerospace Workers (Applicant) v. Roelofson Elevator Company Division of Montgomery Elevator Co. Limited (Respondent) v. Group of Employees (Objects).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND ENGINEERING STAFF, DRAFTSMEN, SERVICE DEPARTMENT EMPLOYEES AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS." (47 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS! LIST			43
NUMBER OF PERSONS WHO CAST BALLOTS		43	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	16		
Number of ballots marked against			
APPLICANT	27		

11201-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. The British Motor Corporation of Canada Limited (Respondent) v. Group of Employees (Objectors).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, AUTOMOBILE AND TRACTOR FIELD SERVICE REPRESENTATIVES, AUTOMOBILE AND TRACTOR PARTS FIELD SALES REPRESENTATIVES, AUTOMOBILE AND TRACTOR FIELD SALES REPRESENTATIVES GENERAL PURCHASING AGENT, PRIVATE SECRETARY TO GENERAL MANAGER, PRIVATE SECRETARY TO PARTS DEPARTMENT MANAGER, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST			35
NUMBER OF PERSONS WHO CAST BALLOTS		35	
NUMBER OF BALLOTS MARKED IN FAVOUR			
OF APPLICANT	12		
NUMBER OF BALLOTS MARKED AGAINST			
APPLICANT	23		

11305-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Paolucci Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS! LIS	Т	6
NUMBER OF PERSONS WHO CAST BALLOTS		6
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
Number of ballots marked against		
APPLICANT	3	
	_	

11307-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Venezia Bakery Limited (Respondent).

Unit: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

Number of names of persons on voters' List

Number of persons who cast ballots

Number of ballots marked in favour

of applicant

Number of ballots marked against

applicant

3

11309-65-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Capri Bakery (Respondent).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

Number of Names of Persons on Revised

Voters' List

Number of Persons who Cast Ballots

Number of Ballots Marked in Favour

Of Applicant

O

Number of Ballots Marked against

Applicant

4

# APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

10970-65-R: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Applicant) v. Parisian Laundry Co. of Toronto Ltd. (Respondent). (185 employees).

11440-65-R: International Molders and Allied Workers Union, AFL. CIO. CLC. (Applicant) v. Dominion Gasket & Mfg., Co., Limited (Respondent). (115 employees).

11469-65-R: Local Union # 1940, United Brotherhood of Carpenters & Joiners of America (Applicant) v. Anglin-Norcross Ontario Limited (Respondent). (12 EMPLOYEES).

11470-65-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) v. NORTHLAND MACHINERY SUPPLY Co. LTD. (RESPONDENT). (2 EMPLOYEES).

- 11472-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). (425 EMPLOYEES).
- 11490-65-R: International Hod Carriers Building and Common Labourers Union, Local 837 (Applicant) v. Gavin Construction Limited (Respondent). (3 employees).
- 11504-65-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) v. INDEPENDENT COAL & LUMBER TO. (1961) LIMITED (RESPONDENT) v. INTERNATIONAL WOODSORKERS OF AMERICA (INTERVENER). (8 EMPLOYEES).
- 11520-65-R: London and District Building Service Workers' Union, Local 220, B.S.E.I.U., A.F.L.-C.I.O.-C.L.C. (Applicant) v. R. C. Separate Schools of St. Thomas (Respondent). (2 employees).
- 11523-65-R: International Hod Carriers' Building and Common Labeurers' Union of America, Local Union No. 837 (Applicant) v. Wilchar Construction Limited (Respondent). (8 employees).
- $\frac{11539-65-R}{OF}$ : Local Union # 1940, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cameron McIndoo (Respondent). (6 employees).
- 11553-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) v. CANADA WIRE AND CABLE COMPANY LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER). (17 EMPLOYEES).
- 11592-65-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. Kohen Box Company, Concord Division Packaging Windsor, Ontario (Formerly Ojibway, Ontario) (Respondent). (35 Employees).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

# DISPOSED OF DURING MARCH

11227-65-R: CLEMENT BEDARD (APPLICANT) V. BUILDING SERVICE EMPLOYEES'
INTERNATIONAL UNION, LOCAL 210, WINDSOR, ONTARIO (RESPONDENT) V. UNIVERSITY OF
WINDSOR (INTERVENER). (126 EMPLOYEES) (GRANTED).

NUMBER OF NAMES ON REVISED VOTERS' LIST

NUMBER OF BALLOTS CAST

NUMBER OF BALLOTS MARKED IN FAVOUR OF

RESPONDENT

34

Number of Ballots Marked Against

8L

- 11386-65-R: Harry Vogt (Applicant) v. Sudbury General Workers Union (Local 101) (Respondent) v. Pawson's (Sudbury) Limited (Intervener).
- 11387-65-R: REGINALD GILCHRIST (APPLICANT) v. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) v. PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11388-65-R: MARTTI PARVIAINEN (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (Local 101) (Respondent) V. Pawson's (Sudbury) Limited (Intervener).
- AND -11389-65-R: ROBERT A. DENNIE (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
- (Local 101) (Respondent) v. Pawson's (Sudbury) Limited (Intervener).
- 11390-65-R: Walter Sanwald (Applicant) v. Sudbury General Workers Union (Local 101) (Respondent) v. Pawson's (Sudbury) Limited (Intervener).
- 11391-65-R: PETER SMIJAN (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) V. PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11392-65-R: JOHN P. KAYES (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) V. PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11393-65-R: ADELARD BILADEAU (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) V. PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11394-65-R: Marcel Clouthier (Applicant) v. Sudbury General Workers Union (Local 101) (Respondent) v. Pawson's (Sudbury) Limited (Intervener). (12 EMPLOYEES) (DISMISSED).
- (SEE INDEXED ENDORSEMENT PAGE 910).
- 11397-65-R: Harry Mott (Applicant) v. The United Cement, Lime & Gypsum Workers International Union CLC (Respondent). (15 employees) (DISMISSED). (Re: Fletcher Tile Limited).
- 11419-65-R: PAUL BRILLINGER (APPLICANT) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 514 (RESPONDENT) v. GLOBELITE BATTERIES LIMITED (EASTERN DIVISION) (INTERVENER). (65 EMPLOYEES) (GRANTED).
- 11423-65-R: Mr. Ernest Dobbs (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent) v. The Runnymede Hospital (Intervener).

  (4 employees) (DISMISSED).
- 11441-65-R: Jacques Quenette, and Jim Angel Representing the employees of Pepsi-Cola Canada Ltd. (Applicants) v. Local Union Number 365, Ottawa, Ontario, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Respondent) v. Pepsi-Cola Canada Ltd. (Intervener).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF PEPSI-COLA CANADA LTD., AT OTTAWA, SAVE AND EXCEPT SALES SUPERVISORS, ROUTE MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF SALES SUPERVISOR, ROUTE MANAGER AND FOREMAN AND OFFICE STAFF."

(64 EMPLOYEES). (GRANTED).

Number of names of persons on revised voters' List 64

Number of persons who cast ballots 65

Ballots segregated and not counted 2

Number of ballots marked in favour 29

Number of ballots marked against 89

Respondent 34

11449-65-R: GARNET PORTER RONALD COLE GARRY SMITH (APPLICANTS) v. Local 440 R.W.D.S.U. (RESPONDENT). (4 EMPLOYEES). (GRANTED).

(RE: BUNNY'S BUNWAGON (JOHN ZAKAROW, OSHAWA).

11451-65-R: Moyer SAND (1965) LIMITED (APPLICANT) v. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (4 EMPLOYEES). (GRANTED).

Number of names of persons on revised
voters' list

Number of persons who cast ballots

Number of ballots marked in favour
of respondent

Number of ballots marked against
respondent

11

## APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING MARCH

11409-65-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT)

V. CANADIAN ANILINE & EXTRACT COMPANY LIMITED (RESPONDENT) V. UNITED STEELWORKERS

OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MARCH

11489-65-U: FIRESTONE TIRE & RUBBER COMPANY OF CANADA LIMITED, INDUSTRIAL PRODUCTS DIVISION (APPLICANT) v. T. BELL ET AL (RESPONDENTS). (WITHDRAWN).

11530-65-U: CHARRON TRANSPORT LIMITED (APPLICANT) v. IVAN BONNER ET AL (RESPONDENTS). (WITHDRAWN).

### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

- 11224-65-U: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Ramsay Industries Limited (Respondent). (WITHDRAWN).
- 11225-65-U: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Brotherhood of Painters, Decorators and Paperhangers of America, Glassworkers Section Local 200 Ottawa (Respondent). (WITHDRAWN).
- 11403-65-U: THE SUDBURY AND DISTRICT GENERAL WORKERS! UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. THE BOARD OF THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF GARSON AND MACLENNAN (RESPONDENT). (WITHDRAWN).
- 11410-65-U: Local 178 LF, Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Robson-Lang (Barrie) Limited (Respondent). (WITHDRAWN).
- 11452-65-U: THE SUDBURY AND DISTRICT GENERAL WORKERS! UNION LOCAL 902 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (APPLICANT) v. THE CORPORATION OF THE TOWN OF CHELMSFORD (RESPONDENT). (WITHDRAWN).

### COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING MARCH

- 11401-65-U: United Steelworkers of America (Complainant) v. Canadian Jamieson Mines Limited (Respondent).
- 11468-65-U: Hotel & Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria & Tavern Employees Union, Local 254 (Complainant) v. Diana Sweets Ltd., 187 Yonge St., Toronto 1, Ont. (Respondent).
- 11477-65-U: Local Union 804, International Brotherhood of Electrical Workers, AFL-C10-CLC (Complainant) v. Ray Electric Limited (Respondent).
- 11480-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Oshawa Engineering & Welding Company Limited (Respondent).
- 11481-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Oshawa Engineering & Welding Company Limited (Respondent).
- 11482-65-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Oshawa Engineering & Welding Company Limited (Respondent).

11494-65-U: INTERNATIONAL HOD CARRIERS! BUILDING & COMMON LABOURERS UNION OF AMERICA, LOCAL 527 (COMPLAINANT) v. MONETA INVESTMENTS LIMITED (RESPONDENT).

11517-65-U: TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (COMPLAINANT) v. SPINRITE YARNS & DYERS LIMITED (RESPONDENT).

## APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING MARCH

11290-65-M: St. Joseph's Hospital, Sudbury (Applicant) v. Canadian Union of Public Employees, Local 161 (Respondent).

11292-65-M: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. UNITED CO-OPERATIVES OF ONTARIO (OWEN SOUND BRANCH) (RESPONDENT).

11326-65-M: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Greenspans Kosher Sausage Co. Limited (Respondent).

# REFERENCE TO BOARD PURSUANT TO SECTION 79A OF THE ACT DISPOSED OF DURING MARCH

11338-65-M: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. of L. C.I.O. C.L.C.) (TRADE UNION) v. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 920).

# APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

11094-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION AFL.CIO.CLC. (APPLICANT) v. GUILDLINE INSTRUMENTS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 927).

11404-65-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Coady Store Fixtures & Equipment Co. Limited (Respondent). (REQUEST DENIED).

11438-65-R: WINDSOR TYPOGRAPHICAL UNION, No. 553 (APPLICANT) v. THE POST PRINTING COMPANY LTD., A DIVISION OF THOMSON NEWSPAPERS LIMITED (LEAMINGTON) (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 930).

### INDEXED ENDORSEMENTS - CERTIFICATION

10775-65-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

BEFORE: J. D. O'Shea, Deputy Vice-Chairman, and Board Members E. Boyer and H. F. Irwin.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., D. M. STOREY AND B. ORMSBY FOR THE APPLICANT, N. MACL. ROGERS, Q.C., AND E. R. MATHER FOR THE RESPONDENT.

DECISION OF: J. D. O'Shea, Deputy Vice-Chairman, and Board Member E. Boyer. (march 2, 1966).

- 1. THE APPLICANT APPLIED, ON AUGUST 25TH, 1965, TO BE CERTIFIED AS BARGAINING AGENT FOR "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES" OF THE RESPONDENT IN THE DISTRICT OF SUDBURY, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.
- 2. The respondent proposed certain additional exclusions from the bargaining unit to which the applicant did not agree and on September 16th, 1965, the Board appointed an Examiner to inquire into and report to the Board on the composition of the bargaining unit and on the list of employees filed by the respondent in this matter.
- 3. Since it appeared that the Examiner was experiencing considerable difficulty in expeditiously completing his examination of certain classifications, the Board caused the Registrar to list this matter for continuation of hearing "to entertain the representations of the parties as to the manner in which the Examiner's inquiry should proceed with respect to persons included in the following classifications: Engineer, Surveyor, Metallurgist, Geologist, and Geological Technician".
- 4. FOR THE PURPOSE OF DEALING WITH THE PERSONS INCLUDED IN THE CLASSIFICATIONS DESCRIBED ABOVE, THE BOARD PROVIDED THE PARTIES, AT THE SECOND HEARING IN THIS MATTER, WITH A LIST OF PERSONS WHO WERE CLAIMED BY THE RESPONDENT TO FALL WITHIN THE ABOVE DISPUTED CLASSIFICATIONS.
- 5. There are 41 persons who are listed by the respondent under the general classifications of either engineer, surveyor, metallurgist, geologist or geological technician. The parties agreed that 8 of these persons are professional engineers and should be excluded from the bargaining unit pursuant to the provisions of section 1 (3) (a) of the Labour Relations Act because they are members of the engineering profession, entitled to practise in Ontario and are employed in a professional capacity. The parties further agreed to the exclusion, from the bargaining unit, of a ninth person who also is a "professional engineer" and who is classified by the respondent under the general classification of "Assistant".
- 6. THE BOARD THEREFORE NOTES THE AGREEMENT OF THE PARTIES THAT K.P. Ho, F.Y. James, J.D. Purdie, A.J. McGuire, K. L. Agnew, F.M. Makarinsky, J.F. Jackson, E.E. Heaslip and H.E. Ney are members of the engineering profession entitled to

PRACTISE IN ONTARIO AND ARE EMPLOYED IN A PROFESSIONAL CAPACITY AND ARE ACCORDINGLY EXCLUDED, PURSUANT TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT, FROM ANY BARGAINING UNIT THAT MIGHT BE DEEMED BY THE BOARD TO BE APPROPRIATE.

- 7. WHILE THE PURPOSE OF THE HEARING IN THIS MATTER WAS EXPLICITLY SET OUT IN THE NOTICE OF HEARING, THE BOARD CAN NOT REFRAIN FROM COMMENTING ON THE FACT THAT COUNSEL FOR THE PARTIES FAILED TO RENDER TO THE BOARD THE ASSISTANCE IT ANTICIPATED RECEIVING PRIOR TO MAKING ITS DETERMINATION IN THIS MATTER.
- 8. It is common ground between the parties that the remaining 33 persons employed under the general classifiactions described above are not "members" within the meaning of section 1 (f) of the Professional Engineers Act, R.S.O. 1960, c. 309, nor are they "professional engineers" as described by section 1 (h) of the Professional Engineers Act. It is agreed that they are persons excluded from the operation of the Professional Engineers Act by the provisions of section 2 (E) of that Act and are not required to become registered under the Professional Engineers Act.
- 9. The respondent took the position that the 33 persons coming under the disputed classifications should be excluded from the bargaining unit because they do substantially the same work as the excluded "professional engineers" employed in the same general classification. In addition, the respondent argued that, because of the specialized training of these 33 persons, some of whom are known as professional metallurgists or professional geologists, they are members of an engineering profession within the meaning of section 1 (3) (a) of the Labour Relations act and therefore such persons should be excluded on the basis of their professional capacity.
- 10. Section 1 of The Professional Engineers Act reads in part as follows:
  - "l. (A) ASSOCIATION MEANS THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO;
    - (E) 'LICENSED' MEANS THAT PERMISSION HAS BEEN GRANTED BY
      THE COUNCIL TO A NON-RESIDENT ENGINEER TO PRACTISE
      TEMPORARILY WITHOUT BEING REGISTERED, AND 'LICENCE'
      MEANS THE OFFICIAL CERTIFICATE UNDER THE SEAL OF THE
      ASSOCIATION EVIDENCING SUCH PERMISSION:
    - (f) \*MEMBER \* MEANS A REGISTERED MEMBER OF THE ASSOCIATION;
    - (H) 'PROFESSIONAL ENGINEER' MEANS A PERSONS WHO PRACTISES PROFESSIONAL ENGINEERING:
    - (I) PROFESSIONAL ENGINEERING' SAVE AS HEREINAFTER MENTIONED
      MEANS THE ADVISING ON, THE REPORTING ON, THE DESIGNING OF,
      THE SUPERVISING OF THE CONSTRUCTION OF, ALL PUBLIC UTILITIES
      INDUSTRIAL WORKS, RAILWAYS, TRAMWAYS, BRIDGES, TUNNELS,
      HIGHWAYS, ROADS, CANALS, HARBOUR WORKS, LIGHTHOUSES, RIVER

IMPROVEMENTS, WET DOCKS, DRY DOCKS, FLOATING DOCKS, DREGES, CRANES, DRAINAGE WORKS, IRRIGATION WORKS, WATERWORKS, WATER PURIFICATION PLANTS. SEWERAGE WORKS, SEWAGE DISPOSAL WORKS, INCINERATORS, HYDRAULIC WORKS, POWER TRANSMISSION SYSTEMS. STEEL, CONCRETE AND REINFORCED CONCRETE STRUCTURES, ELECTRIC LIGHTING SYSTEMS, ELECTRIC POWER PLANTS, ELECTRIC MACHINERY, ELECTRIC APPARATUS, ELECTRICAL COMMUNICATION SYSTEMS AND EQUIPMENT, MINERAL PROPERTY, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, AND EQUIPMENT AND APPARATUS FOR CARRYING OUT SUCH OPERATIONS, MACHINERY, BOILERS AND THEIR AUXILIARIES, STEAM ENGINES, HYDRAULIC TURBINES, PUMPS, INTERNAL COMBUSTION ENGINES, AND OTHER MECHANICAL STRUCTURES, CHEMICAL AND METALLURGICAL MACHINERY, APPARATUS AND PROCESSES, AND AIRCRAFT AND GENERALLY ALL OTHER ENGINEERING WORKS INCLUDING THE ENGINEERING WORKS AND INSTALLATIONS RELATING TO AIRPORTS, AIRFIELDS AND LANDING STRIPS AND RELATING TO TOWN AND COMMUNITY PLANNING;

- (J) \*REGISTERED\* MEANS THAT AN ENGINEER HAS BEEN ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AND THAT HIS NAME HAS BEEN ENROLLED IN THE REGISTER, AND \*CERTIFICATE OF REGISTRATION\* MEANS THE OFFICIAL CERTIFICATE UNDER THE SEAL OF THE ASSOCIATION EVIDENCING THE SAME;
- 11. SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT READS AS FOLLOWS:
  - "2. NOTHING IN THIS ACT PREVENTS OR SHALL BE DEEMED TO PREVENT:
    - (E) ANY PERSON FROM ADVISING ON OR REPORTING ON ANY MINERAL PROPERTY OR PROSPECT, OR FROM ADVISING ON, REPORTING ON, DESIGNING, OR SUPERVISING THE CONSTRUCTION OF ANY MINING PLANT, MINING MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL MACHINERY, OR EQUIPMENT, APPARATUS, OR PLANT OR ANYTHING IN CONNECTION THEREWITH FOR CARRYING OUT SUCH OPERATIONS, OR CHEMICAL MACHINERY, APPARATUS OR PROCESSES;

OR TO REQUIRE ANY SUCH PERSON TO BECOME REGISTERED OR LICENSED UNDER THIS ACT TO SO PERFORM OR PRACTISE."

- 12. SECTION 6 OF THE PROFESSIONAL ENGINEERS ACT READS AS FOLLOWS:
  - "6. FOR THE PURPOSES OF REPRESENTATION UPON THE COUNCIL AND FOR REGISTRATION AND FOR SUCH PURPOSES ONLY AS ARE SET OUT IN THIS ACT, THE MEMBERSHIP OF THE ASSOCIATION IS DIVIDED INTO THE FOLLOWING BRANCHES:
    - L. Divil

- 3. CHEMICAL AND METALLURGICAL.
- 4. ELECTRICAL.
- 5. MINING."
- 13. SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:
  - "1. (3) FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE,
    - (A) WHO IS A MEMBER OF THE ARCHITECTURAL, DENTAL, ENGINEERING, LAND SURVEYING, LEGAL OR MEDICAL PROFESSION ENTITLED TO PRACTISE IN ONTARIO AND EMPLOYED IN A PROFESSIONAL CAPACITY:"
- 14. The fact that section 1 (3) (a) of The Labour Relations Act excludes members of the professions referred to therein who are entitled to practise in Ontario and are employed in a professional capacity, does not mean that the choice of such professions is based solely on the mental capacity, training, skill or ability of such members when compared to other persons or other professions. A disbarred lawyer and a doctor who fails to register pursuant to the provisions of The medical act are not entitled to practise in Ontario. Section 48 of The Medical act, R.S.O. 1960, c. 234, provides that a doctor who fails to register is liable to all the penalties imposed by that act in the same manner as unqualified or unregistered practitioners. Such disbarred or unregistered members, since they are not "entitled to practise in Ontario", are accordingly covered by the provisions of The Labour Relations act no matter what "professional" skill or ability they may have or in what capacity they are employed.
- 15. Since, pursuant to the provisions of section 6 of The Professional Engineers Act there is provision for various branches of professional engineering, including the chemical and metallurgical branch and the mining branch, persons who are not "professional engineers" but who do chemical, metallurgical or mining work, even though members of some other profession which is not referred to in The Labour Relations Act are, in our opinion, employees within the meaning of The Labour Relations Act. Again, in making such a determination, the Board is not in any way assessing or comparing skill, training or ability.
- 16. Section 16 (1) of the Professional Engineers Act which provides that only a person who is a member of the "Association of Professional Engineers of the Province of Ontario" or has obtained a "Licence" from the Association may use the term or title "professional engineer or registered professional engineer" or any abbreviation thereof, prohibits other persons, except as in that Act otherwise provided, from taking and using the title "engineer" or any abbreviation thereof in such context or in such manner as to lead to the belief that a person is a "professional engineer". It would appear that the only section of the Act which provides for other persons to take or use the title "engineer" is set out in subsection 2 (c) of the Professional Engineers Act. Section 2 (c) provides as follows:

- "2. Nothing in this Act prevents or shall be deemed to prevent,
  - (c) any person from practising his trade or calling
    of a stationary engineer who holds a certificate
    under The Operating Engineers Act or from so
    designating himself;"

(EMPHASIS ADDED)

17. HAVING REGARD TO THE PROVISIONS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT, WE ARE OF OPINION THAT ALL THREE FACTORS REFERRED TO IN THAT SECTION MUST BE MET IN ORDER THAT A PERSON BE DEEMED NOT TO BE AN EMPLOYEE FOR THE PURPOSE OF THE LABOUR RELATIONS ACT. THESE THREE FACTORS ARE AS FOLLOWS:

A PERSON MUST BE A MEMBER OF ONE OF THE PROFESSIONS REFERRED TO IN SECTION 1 (3) (A) OF THE ACT AND MUST BE ENTITLED TO PRACTISE IN ONTARIO AND MUST BE EMPLOYED IN A PROFESSIONAL CAPACITY.

ONLY A PERSON WHO MEETS ALL THREE PREREQUISITES IS DEEMED NOT TO BE AN EMPLOYEE FOR THE PURPOSE OF THE LABOUR RELATIONS ACT.

- 18. Dealing specifically with members of the engineering profession we are of opinion that the members of the engineering profession referred to in section 1 (3) (a) of the Act are persons who are "members" within the meaning of section 1 (f) of the Professional Engineers Act and such persons must be entitled to practise in Ontario and must be employed in a professional capacity. In our opinion only "professional engineers" (within the meaning of section 1 (h) of the Professional Engineers Act) who are "members" (within the meaning of section 1 (f) of the Professional Engineers Act) of the "Association of Professional Engineers of the Province of Ontario", who are entitled to practise in Ontario and who are employed in a professional capacity, meet all of the requirements of section 1 (3) (a) of the Labour Relations Act.
- 19. It is to be noted that in defining "professional engineering", section 1 (1) of the Professional Engineers Act provides in part that "professional engineering save as hereinafter mentioned means ....". Section 2 of that Act sets out certain work which falls within the exception referred to in section 1 (1) and accordingly such work is not "professional engineering" as defined by section 1 (1). Since the parties have agreed that the persons with whom we are here concerned are employed under the provisions of section 2 (e) of the Professional Engineers Act, it follows that, even though employed in an engineering capacity, they are not doing "professional engineering" as defined in section 1 (1) and accordingly are not "professional engineers" within the meaning of section 1 (h) of that Act. Moreover, none of such persons are "members" of or "licensed" by the "Association of Professional Engineers". Accordingly they are not members of the engineering profession entitled to practise in Ontario as required by section 1 (3) (a) of the Labour Relations Act and, apart from the provisions of section 1 (3) (b) of the Act are eligible for inclusion in a bargaining unit.
- 20. It is readily apparent that professional engineers specialize in various fields including Chemical and Metallurgical and Mining. The fact that other

PERSONS CAN AND DO PRACTISE A PROFESSION OR TRADE AND WORK IN THESE FIELDS WITHOUT CONTRAVENING THE PROFESSIONAL ENGINEERS ACT DOES NOT MAKE SUCH PERSONS PROFESSIONAL ENGINEERS, BUT ON THE CONTRARY, THE FACT THAT THEY ARE EXCLUDED FROM THE OPERATION OF THE PROFESSIONAL ENGINEERS ACT BY THE TERMS OF SECTION 2 OF THAT ACT, LOGICALLY LEADS US TO THE CONCLUSION THAT SUCH PERSONS ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO, NO MATTER WHAT SKILL OR ABILITY THEY HAVE OR IN WHAT CAPACITY THEY ARE EMPLOYED.

- 21. We therefore find that the persons employed in the disputed classifications are not members of the engineering profession entitled to practise in Ontario as required by section  $1\ (3)\ (a)$  of the Labour Relations Act.
- 22. FOR THE PURPOSES OF CLARITY THE BOARD THEREFORE DECLARES THAT
- K. E. BLASZCZYK, CLASSIFIED AS DESIGN ENGINEER MECHANICAL,
- F. G. PICKARD, CLASSIFIED AS STRATHCONA PROJECT METALLURGICAL ENGINEER,
- M. DEROUIN, CLASSIFIED AS FALCONBRIDGE MINE VENTILATION ENGINEER,
- T. F. PUGSLEY, CLASSIFIED AS FALCONBRIDGE MINE JR. PLANNING ENGINEER.
- K. A. BAILLIE, CLASSIFIED AS STRATHCONA MINE PLANNING ENGINEER,
- J. B. WATTS, CLASSIFIED AS STRATHCONA MINE PLANNING ENGINEER,
- J. M. WOJAKOWSKI, CLASSIFIED AS HARDY MINE ENGINEER.
- E. E. EASTON, CLASSIFIED AS MINE RESEARCH ENGINEER PROJECTS.
- 1. J. DICKIE, CLASSIFIED AS MINE RESEARCH ENGINEER.
- J. S. SCOTT, CLASSIFIED AS INSTRUMENTATION ENGINEER.
- H. M. HODGSON, CLASSIFIED AS FALCONBRIDGE FIELD SURVEYOR,
- W. G. PESCHKE, CLASSIFIED AS ONAPING FIELD SURVEYOR,
- H. S. BAINS, CLASSIFIED AS RESEARCH METALLURGIST.
- A. C. BIGG. CLASSIFIED AS RESEARCH METALLURGIST.
- P. R. BIRCH, CLASSIFIED AS RESEARCH METALLURGIST,
- M. A. GOUDIE, CLASSIFIED AS RESEARCH MINERALOGIST.
- C. R. Jose, classified as Research Metallurgist,
- C. B. MACKENZIE, CLASSIFIED AS RESEARCH METALLURGIST,
- J. D. RANNIE, CLASSIFIED AS RESEARCH METALLURGIST.
- A. L. McKague, classified as Pyrrhotite plant metallurgist,
- R. W. SISCOE, CLASSIFIED AS HARDY FECUNIS MILLS METALLURGIST,
- T. P. ARMSTRONG, CLASSIFIED AS FALCONBRIDGE MINE UDG GEOLOGIST,
- P. M. FILLMORE, CLASSIFIED AS FALCONBRIDGE MINE UDG GEOLOGIST.
- R. H. HEWINS, CLASSIFIED AS PETROGRAPHER GEOLOGIST,
- M. A. NICHOL, CLASSIFIED AS FALCONBRIDGE MINE DEVELOP GEOLOGIST.
- W. D. HARRISON, CLASSIFIED AS SPECIAL STUDIES GEOLOGIST.
- G. M. ARCHIBALD, CLASSIFIED AS ASSISTANT SPECIAL STUDIES GEOLOGIST.
- R. G. KREINER, CLASSIFIED AS STRATHCONA UDG GEOLOGIST.
- J. T. EGAN, CLASSIFIED AS FALCONBRIDGE MINE GEOLOGICAL TECHNICIAN,
- F. D. DELABBIO, CLASSIFIED AS HARDY MINE UDG GEOLOGICAL TECHNICIAN.
- D. A. FRASER, CLASSIFIED AS STRATHCONA GEOLOGICAL TECHNICIAN,
- J. C. SECENJ, CLASSIFIED AS HARDY MINE UDG GEOLOGICAL TECHNICIAN, AND
- H. C. Weslake, classified as Strathcona UDG geological technician, are not members of the engineering profession entitled to practise in Ontario and are therefore not excluded pursuant to the provisions of section 1 (3) (a)

OF THE LABOUR RELATIONS ACT FROM ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE.

23. However, so there will be no misunderstanding, the Board in making this determination has in no way touched on the issue of whether or not the above

NAMED PERSONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION  $1\ (3)\ (B)$  of The Labour Relations Act.

- 24. IN ADDITION, APART FROM ANY MANAGERIAL FUNCTIONS WHICH MAY BE EXERCISED BY THE ABOVE NAMED PERSONS, THE BOARD HAS NOT DETERMINED WHETHER OR NOT THEY SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT AS THE OFFICE, CLERICAL AND TECHNICAL STAFF OF THE RESPONDENT OR SHOULD FORM A SEPARATE BARGAINING UNIT OF THEIR OWN. THE BOARD IS PREPARED TO HEAR REPRESENTATIONS ON THAT ISSUE AFTER THE EXAMINER'S REPORT HAS BEEN COMPLETED AND THE BOARD HAS MADE A DETERMINATION WITH RESPECT TO ANY MANAGERIAL FUNCTIONS THE ABOVE NAMED PERSONS ARE ALLEGED TO HAVE.
- 25. Mr. F. D. Edwards, Examiner, is accordingly directed to proceed with his examination in accordance with the authorization set forth in the Board's decision of September 15th, 1965, taking into consideration the Board's decision as set out above.

DECISION OF: BOARD MEMBER H. F. IRWIN. (MARCH 2, 1966).

- 1. | DISSENT.
- 2. IN SUBSTANCE, THE MAJORITY DECISION FINDS THAT:
  - (a) ONLY "PROFESSIONAL ENGINEERS" (WITHIN THE MEANING OF SECTION 1 (H) OF THE PROFESSIONAL ENGINEERS ACT) WHO ARE "MEMBERS" (WITHIN THE MEANING OF SECTION 1 (F) OF THE PROFESSIONAL ENGINEERS ACT) OF THE "ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO", WHO ARE ENTITLED TO PRACTISE IN ONTARIO AND WHO ARE EMPLOYED IN A PROFESSIONAL CAPACITY, MEET ALL THE REQUIREMENTS OF SECTION 1 (3) (A) OF THE LABOUR RELATIONS ACT;
  - (B) THE PERSONS IN THE DISPUTED CLASSIFICATIONS ARE NOT ENGAGED IN "PROFESSIONAL ENGINEERING" AS DEFINED IN SECTION 1 (I) OF THE PROFESSIONAL ENGINEERS ACT AND, THEREFORE, ARE NOT "PROFESSIONAL ENGINEERS" WITHIN THE MEANING OF SECTION 1 (H) OF THAT ACT;
  - (c) None of these persons are "MEMBERS" OF OR "LICENSED"

    BY THE "ASSOCIATION OF PROFESSIONAL ENGINEERS" AND, THEREFORE,

    ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO

    PRACTISE IN ONTARIO AS REQUIRED BY SECTION 1 (3) (A) OF THE

    LABOUR RELATIONS ACT; AND
  - (D) AS THESE PERSONS ARE EXCLUDED FROM THE OPERATION OF THE PROFESSIONAL ENGINEERS ACT BY THE PROVISIONS OF SECTION 2 OF THAT ACT THEY ARE NOT MEMBERS OF THE ENGINEERING PROFESSION ENTITLED TO PRACTISE IN ONTARIO NO MATTER WHAT SKILL OR ABILITY THEY HAVE OR IN WHAT CAPACITY THEY ARE EMPLOYED.
- 3. WITH RESPECT, I CANNOT CONCUR IN THESE FINDINGS. SECTION 1 (1) OF THE

PROFESSIONAL ENGINEERS ACT READS IN PART AS FOLLOWS:

(I) "PROFESSIONAL ENGINEERING" SAVE AS HEREINAFTER
MENTIONED MEANS THE ADVISING ON, THE REPORTING
ON, THE DESIGNING OF, THE SUPERVISING OF THE
CONSTRUCTION OF ALL...MINERAL PROPERTY, MINING
MACHINERY, MINING DEVELOPMENT, MINING OPERATIONS,
GAS AND OIL DEVELOPMENTS, SMELTERS, REFINERIES,
METALLURGICAL MACHINERY, AND EQUIPMENT AND
APPARATUS FOR CARRYING OUT SUCH OPERATIONS...
CHEMICAL AND METALLURGICAL MACHINERY, APPARATUS
AND PROCESSES, ...;

(EMPHASIS ADDED)

- 4. SECTION 2 (E) OF THE PROFESSIONAL ENGINEERS ACT READS AS FOLLOWS:
  - NOTHING IN THIS ACT PREVENTS OR SHALL BE DEEMED TO PREVENT,
  - (E)

    ANY PERSON FROM ADVISING ON OR REPORTING ON ANY
    MINERAL PROPERTY OR PROSPECT, OR FROM ADVISING
    ON, REPORTING ON, DESIGNING, OR SUPERVISING THE
    CONSTRUCTION OF ANY MINING PLANT, MINING MACHINERY,
    MINING DEVELOPMENT, MINING OPERATIONS, GAS AND OIL
    DEVELOPMENTS, SMELTERS, REFINERIES, METALLURGICAL
    MACHINERY, OR EQUIPMENT, APPARATUS, OR PLANT OR
    ANYTHING IN CONNECTION THEREWITH FOR CARRYING OUT
    SUCH OPERATIONS, OR CHEMICAL MACHINERY, APPARATUS
    OR PROCESSES:

OR TO REQUIRE ANY SUCH PERSON TO BECOME REGISTERED OR LICENSED UNDER THIS ACT TO SO PERFORM OR PRACTISE. (EMPHASIS ADDED)

- 5. Section 1 (I) of The Professional Engineers Act states that "professional engineering" <u>Includes</u> the engineering work described therein as it relates to the mining industry, gas and oil developments, smelters, refineries, metallurgical and chemical processes.
- 6. Section 2 (e) of The Professional Engineers Act does not remove this work from the scope of "professional engineering" as defined in section 1 (i) of the Act but merely allows persons other than registered professional engineers to also perform this work without becoming registered or licensed under the Act to so perform or practise. In the circumstances, these persons could be members of the engineering profession entitled to practise in Ontario and employed in a professional capacity. If any of these persons are graduates from a university recognized by the council of the Association of Professional Engineers of the Province of Ontario in any branch of engineering or science the practise of which constitutes professional engineering and have performed this work for at least one year following graduation, surely they must be recognized as members of the Engineering profession employed in a professional capacity and entitled to practise in Ontario. Such persons could join the Association of Professional Engineers at any time by merely completing an application form and paying the prescribed fee. In insisting that such persons be registered professional

ENGINEERS, THIS BOARD IS REQUIRING THEM TO MEET A STANDARD WHICH THE PROFESSIONAL ENGINEERS ACT SPECIFICALLY STATES SHALL NOT BE REQUIRED OF THEM WHILE ENGAGED IN THEIR PRESENT EMPLOYMENT EVEN THOUGH THEY ARE PERFORMING PROFESSIONAL ENGINEERING WORK AS DEFINED IN SECTION 1 (1) OF THAT ACT.

- $7 \cdot \:\:$  If the majority decision is correct in finding that the engineering work defined in section 2 (e) of the Professional Engineers act is not professional engineering, then the persons in the employ of the respondent who are registered professional engineers are not doing professional engineering work and in accordance with the majority decision are not professional engineers and do not meet the requirements to be exempted from the Labour Relations act under the provisions of section 1 (3) (a) thereof.
- 8. For these reasons, I believe that some of the persons in the disputed classifications may fully qualify for exemption from The Labour Relations Act under section 1 (3) (a) thereof. It should be carefully noted that this section does not use the words "professional engineer" but rather the words "a member of the...engineering...profession...". I would have directed Mr. F. D. Edwards, Examiner, to inquire into and report to the Board on the educational qualifications, the name of the university from which the person graduated and the degrees obtained in engineering or science, engineering experience, membership in any engineering. Association or society and the precise nature of the engineering work which each of these persons performed on the date the application was made. Then, and only then, would I consider myself in possession of sufficient evidence to decide if the persons in the disputed classifications are members of the engineering profession entitled to practise in Ontario and employed in a professional capacity.

10812-65-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE UNIVERSITY OF GUELPH (RESPONDENT) AND THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (INTERVENER).

BEFORE: J. FINKELMAN, Q.C., CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

DECISION OF THE BOARD: (MARCH 17, 1966).

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- 3. Following the initial hearing in this matter, an Examiner was authorized to inquire into and report to the Board on the composition of the bargaining unit and the duties and responsibilities of the person classified by the respondent as Assistant Chief Engineer.
- 4. FOLLOWING THE SECOND HEARING IN THIS MATTER, THE EXAMINER WAS DIRECTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE RELATIONSHIP, INCLUDING INTERCHANGE, BETWEEN STATIONARY ENGINEERS WORKING IN THE RESPONDENT'S POWER PLANT AND STATIONARY ENGINEERS WORKING IN THE RESPONDENT'S AVION PATHOLOGY BUILDING.
- 5. At a meeting convened by the Examiner on March 4th, 1966, the parties agreed that there was a community of interest and a relationship existing between the two operations of the respondent which made these two operations a unit

APPROPRIATE FOR COLLECTIVE BARGAINING. THE PARTIES ALSO AGREED THAT THERE WAS AN INTERCHANGE OF PERSONNEL BETWEEN THE TWO LOCATIONS AND THAT THE INTERCHANGE WAS ANTICIPATED TO CONTINUE IN THE FUTURE.

6. Having regard to the foregoing agreement of the parties, the Board further finds that all stationary engineers and persons primarily engaged as their helpers in the employ of the respondent at its power plant and Avion Pathology Building in Guelph, save and except the assistant chief engineer and persons above the rank of assistant chief engineer, constitute a unit of employees of the respondent appropriate for collective bargaining.

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10999-65-R: THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA (APPLICANT) v. ATLANTIC PACKAGING COMPANY (RESPONDENT) AND PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466 (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN G. SCOTT, ROD BARRETT AND PAT V. GRASSO FOR THE APPLICANT, SYDNEY M. HARRIS, Q.C., FOR THE RESPONDENT, AND LAURENCE C. ARNOLD AND JOHN STEELE FOR THE INTERVENER AND GROUP OF EMPLOYEES.

DECISION OF BOARD MEMBER J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: (March 10, 1966),

- 1. Following the Report of the Returning officer, dated January 24th, 1966, with respect to the Representation vote held in this matter, the intervener (the incumbent trade union) filed a statement of objections in which it alleged that the applicant was not a trade union within the meaning of section 1 (1) (J) of the Labour Relations Act, and that, therefore, the representation vote and any possible certification resulting from it were nullities. At the hearing held with respect to these objections, counsel for the intervener agreed that there had been no irregularities with respect to the taking of the vote and that the only objection went to the status of the applicant as a trade union. Counsel stated that the facts on which he relied had come to his attention since the first hearing was held in this matter.
- 2. IN EFFECT, THE INTERVENER ASKS THE BOARD TO REVOKE ITS FINDING CONTAINED IN PARAGRAPH 1 OF THE ENDORSEMENT OF THE RECORD IN THIS MATTER, DATED NOVEMBER 30TH, 1965, THAT:

The Board finds that the applicant is a trade union within the meaning of section  $\mathbf{1}$   $(\mathbf{1})$   $(\mathbf{J})$  of The Labour Relations Act.

- 3. THE INTERVENER CALLED EVIDENCE, WHICH IS NOT CONTRADICTED AND WHICH ESTABLISHED THE FOLLOWING FACTS:
  - (1) Some time prior to 1960 there existed an organization known as "District 50, United Mine Workers of America". While this

ORGANIZATION HAD A SET OF RULES DISTINCT FROM THOSE OF ITS PARENT BODY, IT WAS A PART OF AND SUBJECT TO THE CONSTITUTION OF THE UNITED MINE WORKERS OF AMERICA, A WELL-KNOWN INTERNATIONAL TRADE UNION.

- (2) IN 1960, AT A FOUNDING CONVENTION, THE ORGANIZATION KOWN AS DISTRICT 50, UNITED MINE WORKERS OF AMERICA SEVERED ITS RELATIONSHIP WITH THE UNITED MINE WORKERS OF AMERICA AND BECAME AN AUTONOMOUS INTERNATIONAL TRADE UNION WITH ITS OWN CONSTITUTION, BY-LAWS AND OFFICERS. IT HAD CERTAIN FRATERNAL AND COOPERATIVE RELATIONSHIPS WITH THE UNITED MINE WORKERS OF AMERICA, BUT IT WAS NO LONGER PART OF THE SAME STRUCTURE, BEING AN INDEPENDENT ORGANIZATION. IT CARRIED ON THE ACTIVITIES OF A TRADE UNION AND HAS BEEN FOUND TO BE A TRADE UNION BY THIS BOARD.
- (3) IN 1964 AT THE REGULAR CONVENTION HELD IN ACCORDANCE WITH THE PROVISIONS OF ITS CONSTITUTION, DISTRICT 50, UNITED MINE WORKERS OF AMERICA, BY AN AMENDMENT TO ITS CONSTITUTION, CHANGED ITS NAME TO "THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA". THE EVIDENCE WAS THAT THERE WAS NO CHANGE IN THE SUBSTANCE OF THE ORGANIZATION.
- (4) IN THE MOST RECENT EDITION OF THE CONSTITUTION OF THE APPLICANT, IN WHICH ITS NAME IS DECLARED TO BE THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, THERE ARE A NUMBER OF REFERENCES TO THE ORGANIZATION SIMPLY AS "DISTRICT 50, UNITED MINE WORKERS OF AMERICA". ITS MEMBERSHIP CARDS BEAR THE HEADING "DISTRICT 50, U.M.W.A.". IT IS IN THE LATTER NAME THAT THIS APPLICATION HAS BEEN MADE AND IT WAS BY THAT NAME THAT THE APPLICANT APPEARED ON THE BALLOT IN THE REPRESENTATION VOTE.

4. THE INTERVENER DOES NOT SUGGEST THAT THE FINDINGS BY THE BOARD IN MANY PREVIOUS CASES THAT DISTRICT 50, UNITED MINE WORKERS OF AMERICA (IN SOME CASES UNDER THE NAME DISTRICT 50, U.M.W.A.) WAS A TRADE UNION, WERE IN ERROR. COUNSEL'S ARGUMENT IS SIMPLY THAT SINCE THE AMENDMENT TO THE CONSTITUTION IN 1964 THERE EXISTS NO TRADE UNION BEARING THE NAME OF THE APPLICANT AS IT APPEARS IN THE APPLICATION IN THIS MATTER. ON THE UNCONTRADICTED EVIDENCE, HOWEVER, THERE DOES EXIST A TRADE UNION WHOSE CORRECT AND FULL NAME IS "THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA", AND IT IS THIS TRADE UNION WHICH IS IN FACT THE APPLICANT IN THE INSTANT CASE. WHILE THE APPLICANT MAY HAVE USED A NAME DIFFERING SLIGHTLY FROM ITS CORRECT OFFICIAL NAME, THIS FACT DOES NOT OF NECESSITY RENDER THE APPLICATION A NULLITY AND IT CERTAINLY DOES NOT SUPPORT THE CONCLUSION THAT THE APPLICANT DOES NOT EXIST AS A TRADE UNION. IN THE INSTANT CASE, THE APPLICANT HAS APPLIED FOR CERTIFICATION IN THE NAME BY WHICH IT IS FAMILIARLY KNOWN. ON THE UNCONTRADICTED EVIDENCE THIS NAME DESIGNATES A WELL-KNOWN INTERNATIONAL TRADE UNION, ONE OF WHOSE RESPONSIBLE OFFICERS HAS MADE THE DECLARATION IN FORM 8, CONCERNING THE STATUS OF THE APPLICANT, WHICH HAS BEEN FILED IN THIS MATTER. THERE IS NO EVIDENCE THAT ANYONE HAS BEEN MISLED OR THAT

THERE HAS BEEN ANY ATTEMPT TO MISLEAD IN THIS USE OF THE APPLICANT S FAMILIAR

5. For the foregoing reasons, the Board must refuse the request of the intervener to revoke the finding that the applicant is a trade union. Although the name in which the application has been made does sufficiently designate the applicant trade union, it has been the Board's usual practice to amend the names of parties, so that they appear, as far as possible, in their technically correct names. Having regard to the facts as they have been set out, the Board is of opinion that a Bona fide mistake has been made with the result that the applicant has been incorrectly named. The name of the applicant as it appears in the style of cause of these proceedings is amended to read: "The International Union of District 50, United Mine Workers of America".

. . .

DECISION OF BOARD MEMBER G. RUSSELL HARVEY. (MARCH 10, 1966).

| DISSENT.

Under conditions set out in section 78 the Board is permitted to amend a style of cause.

ORAL TESTIMONY WAS TENDERED BY A FORMER OFFICIAL OF THE APPLICANT IN WHICH REASONS WERE GIVEN FOR THE CONTINUED ADVANTAGEOUS USE OF A TITLE OTHER THAN THE CONSTITUTIONAL NAME OF THE APPLICANT.

IN THE CIRCUMSTANCES OF THIS CASE THE REQUISITE CONDITIONS FOR AMENDMENT DO NOT EXIST.

| WOULD DISMISS THE APPLICATION.

11197-65-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS (APPLICANT) V.

CAMPBELL SOUP COMPANY LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND CHARLES BORSK FOR THE APPLICANT, C. A. MORLEY, T. D. WATSON AND A. E. BURT FOR THE RESPONDENT, BENJAMIN LAMB FOR THE OBJECTORS.

DECISION OF THE BOARD: (MARCH 7, 1966).

- 1. This is an application for certification.
- 2. THE APPLICANT FILED A TOTAL OF 283 MEMBERSHIP DOCUMENTS IN SUPPORT OF ITS APPLICATION OF WHICH 253 CORRESPONDED TO NAMES OF PERSONS INCLUDED IN THE BARGAINING UNIT HEREINAFTER DESCRIBED. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP

INCLUDED 12 COMBINATION APPLICATION CARDS AND RECEIPTS ON WHICH THERE APPEAR TO BE DEFECTS WITH RESPECT TO THE DATE ON WHICH THE DOCUMENT WAS SIGNED AND RECEIPTED. THE MEMBERSHIP DOCUMENTS IN QUESTION WERE ALL SALMON COLOURED APPLICATION CARDS AND RECEIPTS. THE TOP PORTION OF THE CARD BEING THE APPLICATION PORTION CONTAINED A SPACE FOR THE DATE ON WHICH THE CARD WAS SIGNED. THE BOTTOM PORTION OF THE CARD ALSO CONTAINED A SPACE FOR THE INSERTION OF THE DATE ON WHICH THE INITIATION FEE WAS PAID.

- 3. THE BOARD IS SATISFIED AFTER A CLOSE ANALYSIS OF THE CARDS IN QUESTION THAT THE FOLLOWING ARE IN FACT THE DATES WHICH APPEAR ON THE CARDS.
  - Card No. 1 Application portion dated March 23, 1963
    Receipt portion dated March 23, 1965
  - CARD No. 2 APPLICATION PORTION DATED May 18, 1965
    RECEIPT PORTION DATED --
  - CARD No. 3 APPLICATION PORTION DATED NOVEMBER 3, 1956
    RECEIPT PORTION DATED NOVEMBER 3, 1956
  - CARD No. 4 APPLICATION PORTION DATED OCTOBER 13, 1965
    RECEIPT PORTION DATED OCTOBER 13, 1963
  - CARD No. 5 APPLICATION PORTION DATED FEBRUARY 17, 19--
  - CARD No. 6 APPLICATION PORTION DATED JUNE 1910
    RECEIPT PORTION DATED JUNE 10, 1965
  - CARD No. 7 APPLICATION PORTION DATED FEBRUARY 6, 1965
    RECEIPT PORTION DATED FEBRUARY 6, 1963
  - CARD No. 8 APPLICATION PORTION DATED APRIL 24, 19635
    RECEIPT PORTION DATED APRIL 24, 1965
  - Card No. 9 Application portion dated April 29, 19--Receipt portion dated April 29, 1965
  - Card No. 10 Application portion dated March 7, 1965
    Receipt portion dated March 7, 1963
  - CARD No. 11 APPLICATION PORTION DATED JUNE 12, 1965
    RECEIPT PORTION DATED JUNE 12, 1965
  - Card No. 12 Application portion dated May 6, 1955
    Receipt portion dated May 6, 1965
- 4. ALL EXCEPT CARD No. 12 WERE SIGNED BY E. HAWTHORN AS COLLECTOR.
- 5. Mr. Charles Borsk testified that he had completed Form 9 the Declaration Concerning Membership Documents and he had based his information concerning the collectors on either personal knowledge gained from the fact that he had acted

AS COLLECTOR WITH RESPECT TO CERTAIN CARDS OR HAD MADE INQUIRIES OF THE PERSONS WHO HAD ACTED AS COLLECTORS. HE ALSO TESTIFIED THAT HE DIRECTED THE APPLICANT'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES AND THAT THE CAMPAIGN HAD COMMENCED AND THE FIRST CARD WAS SIGNED ON DECEMBER 28, 1965 WHICH WAS THE TERMINAL DATE OF THIS APPLICATION. MR. BORSK FURTHER TESTIFIED THAT WHILE THE APPLICANT HAS PREVIOUSLY ATTEMPTED TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT ON TWO OTHER OCCASIONS, AT THE TIME OF THE FIRST ATTEMPT IN 1959 THE APPLICANT HAD IN USE AT THAT TIME A YELLOW MEMBERSHIP CARD. AT THE TIME OF THE APPLICANT'S SECOND ATTEMPT TO ORGANIZE THE RESPONDENT IN 1963 THE APPLICANT AT THAT TIME WAS USING A BLUE MEMBERSHIP CARD.

- 6. Mr. Borsk testified that the salmon cards in use during the current campaign were printed during the latter part of 1964, and that the applicant had never previously used this colour of membership card. Mr. Borsk testified that any card bearing a date 1963 or earlier would of necessity have to be in error because of the fact that the cards were not in existence at that time.
- 7. Mr. Hawthorn who had signed all but one of the defective cards testified that all of the cards he had signed as collector were in fact signed by the members during the year 1965 and that none of the cards on which he acted as collector had been signed prior to that date. Mr. Hawthorn further testified that he was present when the collector on Card No. 12 signed up that member and that card was also signed during the year 1965. Mr. Hawthorn testified that he had not participated in any prior campaign conducted by the applicant and had never previously assisted the applicant in signing up members.
- 8. BECAUSE OF APPARENT DISCREPANCIES BETWEEN THE SIGNATURES ON SOME OF THE MEMBERSHIP DOCUMENTS AND THE SPECIMEN SIGNATURES PROVIDED BY THE RESPONDENT, THE BOARD CAUSED ONE OF ITS OFFICIALS TO PERSONALLY INTERVIEW SOME 15 PERSONS ON WHOSE BEHALF THE APPLICANT HAD SUBMITTED MEMBERSHIP DOCUMENTS TO VERIFY THAT THE SIGNATURES APPEARING ON THE APPLICATION CARDS WERE IN FACT SIGNED BY THESE PERSONS. CARD No. 8 REFERRED TO ABOVE WAS ONE OF THE CARDS WHICH WAS CHECKED BY THE BOARD'S OFFICER IN THIS MANNER AND THAT PERSON ADVISED THE BOARD'S OFFICER THAT THE SIGNATURE ON THE CARD WAS HIS SIGNATURE AND THAT HE DID IN FACT SIGN THE CARD ON APRIL 24, 1965.
- 9. THE RESPONDENT AND THE OBJECTORS ARGUED THAT THE BOARD SHOULD NOT CONSIDER THE ORAL TESTIMONY OF THE APPLICANT'S WITNESSES AND THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SHOULD BE EVALUATED ON ITS FACE AND ANY EXTRINSIC EVIDENCE SHOULD BE TREATED AS INADMISSABLE.
- 10. IT IS TO BE NOTED THAT THERE IS NO CHALLENGE TO THE MEMBERSHIP OF THE PERSONS ON WHOSE BEHALF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP HAS BEEN SUBMITTED BUT ONLY THE TIME THAT THESE PERSONS JOINED THE APPLICANT IS SUBJECT TO QUESTION BECAUSE OF THE DEFECTS APPEARING ON THE MEMBERSHIP CARDS.
- 11. IT IS THE BOARD'S ESTABLISHED PRACTICE THAT AN APPLICANT SEEKING CERTIFICATION WITHOUT A VOTE MUST SUBMIT DOCUMENTARY EVIDENCE OF MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE EMPLOYER AND SUCH DOCUMENTARY EVIDENCE MUST BE DATED WITHIN SIX MONTHS OF THE DATE THE APPLICATION IS MADE. HOWEVER, WHERE AN APPLICANT SEEKS A REPRESENTATION VOTE THE APPLICANT MUST SUBMIT DOCUMENTARY EVIDENCE OF MEMBERSHIP ON BEHALF OF NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT

IN THE BARGAINING UNIT AND SUCH DOCUMENTARY EVIDENCE OF MEMBERSHIP MUST BE DATED WITHIN ONE YEAR OF THE DATE THE APPLICATION WAS MADE.

- 12. IN THIS CASE THE APPLICANT IS SEEKING A REPRESENTATION VOTE AND HAS SUBMITTED DOCUMENTARY EVIDENCE OF MEMBERSHIP IN SUPPORT OF NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. HOWEVER, BECAUSE OF DISCREPANCIES APPEARING ON THE FACE OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP DOUBT IS CAST ON THE TIME WHEN SOME OF THE DOCUMENTS WERE SIGNED AND THERE ARE SUFFICIENT DOCUMENTS CALLED INTO QUESTION THAT IF THE BOARD WERE TO FIND THE QUESTIONED DOCUMENTS WERE SIGNED MORE THAN ONE YEAR PRIOR TO THE DATE THE APPLICATION WAS MADE, THE BOARD WOULD NOT BE ABLE TO FIND THAT "NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE".
- 13. Section 50 of the Board's Rules of Procedure reads as follows:
  - "50. (1) EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES, AS THE CASE MAY BE, AND,
    - (A) IS ACCOMPANIED BY A RETURN MAILING ADDRESS AND THE NAME OF THE EMPLOYER; AND
    - (B) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.
  - (2) No oral evidence of membership in a trade union or of objection by employees to certification of a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be accepted by the Board except to identify and substantiate the written evidence referred to in subsection  $1_{\bullet}^{II}$
- 14. In this case the provisions of subsection 1 of section 50 with respect to the filing of the documentary evidence of membership has been complied with. The question remains as to whether or not the oral evidence heard by the Board in this case concerning the documentary evidence of membership falls within the exception provided by section 50 (2). Since the oral evidence heard by the Board did not deal with the fact that the members joined the applicant union but rather was concerned with the time at which such persons joined the union, the Board finds that such oral evidence identifies and substantiates the written evidence and accordingly falls within the exception provided by section 50 (2) of the Board's Rules of Procedure and is accordingly admissable.

- 15. HAVING REGARD TO ALL THE EVIDENCE AND IN THE ABSENCE OF ANY EVIDENCE FROM WHICH WE COULD INFER THAT THE APPLICANT ATTEMPTED TO MISLEAD THE BOARD, THE BOARD FINDS THAT ALL THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE WAS SIGNED WITHIN THE PERIOD OF ONE YEAR PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION. THE BOARD FURTHER FINDS THAT THE ERRORS IN DATES WHICH APPEARED. ON THE CARDS IN QUESTION WERE BONA FIDE MISTAKES CAUSED BY HUMAN ERROR.
- 16. BEFORE LEAVING THIS MATTER, HOWEVER, THE BOARD CANNOT REFRAIN FROM COMMENTING UPON THE FACT THAT THE MEMBERSHIP DOCUMENTS IN QUESTION APPEARED TO BE SLOPPILY PREPARED AND WERE NOT ADEQUATELY CHECKED PRIOR TO BEING FILED BY THE APPLICANT. THE DELAY IN THE DETERMINATION OF THIS MATTER BY THE BOARD WAS OCCASIONED BY THE LACK OF CARE ON THE PART OF THE APPLICANT AND IF THE APPLICANT SUFFERS AS A RESULT OF THIS DELAY IT HAS BEEN THE AUTHOR OF ITS OWN MISFORTUME.
- 17. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (j) OF THE LABOUR RELATIONS ACT.
- 18. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS NEW TORONTO PLANT, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, SECURITY GUARDS, LABORATORY, INSPECTION, TIME, OFFICE AND SALES STAFF AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 20. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
- 21. THE BOARD DIRECTS THAT SAMUEL GLEASON, SAMUEL GRAY, CECIL LAWN, JOHN LONG, BERESFORD MARSHALL AND ETHEL SCOTT, PERSONS CLASSIFIED BY THE RESPONDENT AS "CLERK WAREHOUSING", BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY FOR INCLUSION IN THE BARGAINING UNIT.
- 22. Mr. F. D. EDWARDS, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF SAMUEL GLEASON, SAMUEL GRAY, CECIL LAWN, JOHN LONG, BERESFORD MARSHALL AND ETHEL SCOTT.
- 23. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.
- 24. THE MATTER IS REFERRED TO THE REGISTRAR.

11232-65-R: BASIC STRUCTURE STEEL FABRICATORS EMPLOYEES ASSOCIATION (APPLICANT) v. BASIC STRUCTURE STEEL FABRICATORS LIMITED (RESPONDENT).

BEFORE: J. D. O'Shea, Deputy Vice-Chairman, and Board Members G. Russell Harvey

APPEARANCES AT THE HEARING: GLYNN A. GREEN, Q.C., CORNELIS VAN KRALINGEN AND ALLAIN BOISVERT FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: (MARCH 2, 1966).

- 1. This is an application for certification made on December 28th, 1965, in which the applicant requested that a pre-hearing representation vote be taken.
- 2. SINCE THE APPLICANT HAD NEVER HAD ITS STATUS AS A TRADE UNION FORMALLY RECOGNIZED BY THE BOARD, THE BOARD, PURSUANT TO ITS USUAL PRACTICE, DIRECTED THAT THE BALLOT BOX BE SEALED AND THAT THE REGISTRAR LIST THIS MATTER FOR HEARING FOLLOWING THE TAKING OF THE VOTE IN ORDER THAT THE APPLICANT BE GIVEN AN OPPORTUNITY TO ADDUCE EVIDENCE CONCERNING THE MANNER IN WHICH THE APPLICANT CAME INTO EXISTENCE. THE APPLICANT WAS ALSO REQUIRED TO FILE WITH THE BOARD, ITS CONSTITUTION AND BY-LAWS OR ANY OTHER DOCUMENTS WHICH WOULD EVIDENCE ITS EXISTENCE AS A TRADE UNION.
- 3. THE APPLICANT FILED IN THIS MATTER ITS MINUTE BOOK WHICH DISCLOSES THAT THE APPLICANT HELD ITS FIRST MEETING ON SEPTEMBER 22ND, 1965, AT WHICH MEMBERS OF THE APPLICANT ELECTED A PRESIDENT, SECRETARY-TREASURER AND THREE STEWARDS AS OFFICERS OF THE APPLICANT. A FURTHER MEETING WAS HELD ON OCTOBER 7TH, 1965, AT WHICH THERE WAS HELD A GENERAL DISCUSSION OF A "PENDING CONTRACT".
- 4. IT APPEARED FROM THE EVIDENCE THAT EMPLOYEES OF THE RESPONDENT HAD CARRIED ON CERTAIN ACTIVITIES UNDER THE SAME NAME AS THAT WHICH THE APPLICANT NOW HAS, PRIOR TO THE APPLICANT COMING INTO FORMAL EXISTENCE AND EVEN PARTICIPATED IN OTHER PROCEEDINGS BEFORE THE BOARD UNDER THAT NAME. THE APPLICANT DID NOT COME INTO FORMAL EXISTENCE UNTIL NOVEMBER 17th, 1965, AT WHICH TIME A MEETING OF THE EMPLOYEES OF THE RESPONDENT WAS HELD AND A CONSTITUTION WAS ADOPTED. THE ELECTION OF OFFICERS HELD ON SEPTEMBER 22ND, 1965, WAS NOT CONFIRMED OR RATIFIED BY THE APPLICANT'S MEMBERS AFTER THE CONSTITUTION WAS ADOPTED, HOWEVER, A VICE-PRESIDENT WAS "APPOINTED" AT THE MEETING HELD ON NOVEMBER 17th, 1965.
- 5. THE APPLICANT'S CONSTITUTION PROVIDES, AMONG OTHER THINGS, FOR THE ELECTION OF OFFICERS AND DEFINES THEIR DUTIES. THE CONSTITUTION ALSO CONTAINS THE FOLLOWING CLAUSES.

"ALL EMPLOYEES ELIGIBLE TO BE WITHIN A COLLECTIVE BARGAINING UNIT SHALL BE MEMBERS OF THE ASSOCIATION AND SHALL PAY THE REGULAR MONTHLY DUES THEREOF AS DETERMINED BY THE ASSOCIATION FROM TIME TO TIME."

"ALL ASSOCIATION DUES SHALL BE DEDUCTED FROM THE LAST PAY OF EACH MEMBER IN THE MONTH AND PAID OVER TO THE ASSOCIATION ON THE 1ST DAY OF THE NEXT MONTH."

6. THE CONSTITUTION, HOWEVER, CONTAINS NO "OBJECTS": CLAUSE WHICH SETS OUT THE PURPOSE OR OBJECTS OF THE ASSOCIATION.

- 7. IT APPEARS FROM THE EVIDENCE THAT THE UNITED STEELWORKERS OF AMERICA HAD ATTEMPTED TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE APPLICANT'S PRESIDENT TESTIFIED HE WAS INFORMED OF THIS FACT BY AN OFFICER OF THE RESPONDENT WHO ADVISED HIM THAT THE RESPONDENT WOULD DEAL WITH THE UNITED STEELWORKERS OF AMERICA OR A SHOP UNION WHICHEVER THE EMPLOYEES WANTED.
- 8. THE APPLICANT'S WITNESS FURTHER TESTIFIED THAT MEETINGS HELD BY THE EMPLOYEES AT WHICH THE OFFICERS OF THE APPLICANT WERE ELECTED AND THE CONSTITUTION WAS ADOPTED WERE HELD ON COMPANY PREMISES AFTER WORKING HOURS. PERMISSION TO HOLD SUCH MEETINGS WAS OBTAINED FROM MANAGEMENT AND MANAGEMENT WAS ADVISED OF THE PURPOSE OF THESE MEETINGS.
- 9. THE APPLICANT'S WITNESS FURTHER TESTIFIED THAT PRIOR TO MAKING THIS APPLICATION, THE APPLICANT PRESENTED TO THE RESPONDENT ITS PROPOSALS FOR A COLLECTIVE AGREEMENT. IT WOULD APPEAR FROM THE MINUTE BOOK THAT THE "PENDING CONTRACT" WAS DISCUSSED BY THE MEMBERS ON OCTOBER 7TH, 1965. WHILE THE RESPONDENT AGREED TO CERTAIN CONDITIONS, INCLUDING THE PROVISIONS FOR DUES DEDUCTIONS AS SET OUT IN THE CONSTITUTION, THERE WERE CERTAIN ITEMS WHICH STILL HAD TO BE NEGOTIATED.
- 10. THE BOARD IS OF OPINION THAT THE CLAUSES CONTAINED IN THE CONSTITUTION WITH RESPECT TO MEMBERSHIP AND DUES DEDUCTIONS, IN THE FORM IN WHICH THEY APPEAR, ARE MORE APPROPRIATE FOR INCLUSION IN A COLLECTIVE AGREEMENT THAN IN A CONSTITUTION OF A TRADE UNION.
- 11. Having regard to the fact that the employees received permission to use the respondent's premises to conduct meetings for the purpose of forming the applicant association with the knowledge and consent of the respondent, the fact that the employees were advised by an officer of the respondent that the respondent would recognize and employee association as a trade union to represent the respondent's employees and agreed to certain provisions in a proposed collective agreement, the Board finds in all the circumstances of this case, that such actions constitute participation by the respondent in the formation of the applicant and amount to a contribution of financial or other support to the applicant within the meaning of section 10 of the Labour Relations Act.
- 12. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT WHICH THE BOARD CAN CERTIFY.
- 13. This application is therefore dismissed.
- 14. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE CONSISTED OF A "ROUND ROBIN" APPLICATION FORM BEARING THE INSCRIPTION

"We, THE UNDERSIGNED EMPLOYEES OF BASIC STRUCTURE STEEL FABRICATORS LTD., HEREBY APPLY FOR MEMBERSHIP IN THE EMPLOYEES ASSOCIATION OF THE ABOVE MENTIONED FIRM AND ACKNOWLEDGE PAYMENT OF THE SUM OF \$1.50 AS MEMBERSHIP FEE."

THIS STATEMENT IS THEN FOLLOWED BY THE SIGNATURES OF CERTAIN EMPLOYEES. AFTER THE SIGNATURES OF THE EMPLOYEES THERE APPEARS THE FOLLOWING STATEMENT OVER THE

SIGNATURE OF THE SECRETARY-TREASURER OF THE APPLICANT.

"I CERTIFY THIS DOCUMENT TO BE A TRUE ORIGINAL FROM THE ORIGINAL MINUTE BOOK OF BASIC STRUCTURE STEEL FABRICATORS EMPLOYEES ASSOCIATION."

THE APPLICANT ALSO FILED RECEIPTS SIGNED BY THE SECRETARY-TREASURER, HOWEVER, THE PERSONS TO WHOM THE RECEIPTS WERE MADE OUT DID NOT COUNTERSIGN THE RECEIPTS.

15. HAVING REGARD TO THE RESULT HOWEVER, THE BOARD WILL NOT DEAL WITH THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, OTHER THAN TO COMMENT THAT SUCH MEMBERSHIP EVIDENCE IS NOT IN THE FORM OF DOCUMENTARY EVIDENCE WHICH IS USUALLY ACCEPTED BY THE BOARD.

. . .

11299-65-R: BAKERY & CONFECTIONERY WORKERS! INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) v. QUEENS BAKERY (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members H. F. Irwin and D. McDermott.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., NEIL GROCUTT AND DOMENIC RICCI FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENT, AND CARL ORBACH FOR A GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:

(March 15. 1966).

- 1. THIS IS AN APPLICATION FOR CERTIFICATION.
- 2. THERE WERE FOUR INDIVIDUAL PETITIONS FILED IN OPPOSITION TO THE APPLICATION. THE BOARD HEARD EVIDENCE FROM EACH OF THE PETITIONERS.
- 3. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE PETITION OF VINCENZA CONTAVALLE CONSTITUTES A VOLUNTARY EXPRESSION OF DESIRE TO RENOUNCE THE UNION AND THAT IT IS FREE OF MANAGEMENT INFLUENCE OR INTERFERENCE.
- 4. THIS FINDING MAKES IT UNNECESSARY FOR THE BOARD TO DEAL WITH THE REMAINING THREE PETITIONS, SINCE THE COUNT INDICATES THAT THE APPLICANT HAS FILED NINE CARDS THAT STAND UP IN A BARGAINING UNIT OF SIXTEEN.
- 5. The Board finds that the applicant is a trade union within the meaning of section 1 (1) (j) of The Labour Relations Act.
- 6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN OR FORELADY, DRIVER-SALESMEN, OFFICE STAFF, SALES CLERKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

- 7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.
- 8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
- 9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH: THE APPLICANT.
- 10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER D. McDERMOTT: (MARCH 15, 1966).

I CANNOT AGREE WITH THE DECISION OF THE MAJORITY IN THIS MATTER. MY COLLEAGUES HAVE CONSIDERED ONE PETITION OUT OF THE FOUR SUBMITTED, DECIDED THAT IT IS FREE OF CONTAMINATION, AND IN EFFECT HAVE USED IT AS A MEANS OF EXONERATING THE SHORTCOMINGS OF THE OTHER THREE.

OSTENSIBLY AT LEAST THERE WERE FOUR SEPARATE PETITIONS FILED. THAT IS TO SAY, THERE WERE FOUR SEPARATE PIECES OF PAPER, EACH WITH A SEPARATE SIGNATORY. HOWEVER, THE STATEMENTS WERE UNIFORM IN CHARACTER, ALL ORIGINATED FROM THE SAME HAND, ALL WERE CIRCULATED BY THE SAME PRIME MOVER. AS A RESULT, IN MY RESPECTFUL OPINION, THEY WERE ALL PART AND PARCEL OF ONE COLLECTIVE ACTION, AND SHOULD BE CONSIDERED IN FACT AS ONE.

THE PETITION OF VINCENZA CONTAVALLE CANNOT BE CONSIDERED AS AN INDEPENDENT ACTION. IT WAS AN INTEGRAL PART OF THE OVERALL ACTION SPONSORED AND MOVED BY MR. PONZO.

I CHOOSE TO BELIEVE THE TESTIMONY OF MISS CONTAVALLE, AND HER ALONE. IT IS APPARENT TO ME THAT SHE WAS A PASSIVE SIGNATORY, HAD NO REAL INTEREST IN THE MATTER, AND DID NOT KNOW THE TRUE INTENT OF THE PETITION OR ITS FINAL PURPOSE AND DESTINATION. THIS IN ITSELF OF COURSE MAY NOT BE FATAL. BUT NEVERTHELESS SHE ACTED IN CONCERT WITH THE OTHERS, WITTINGLY, OR UNWITTINGLY. THEREFORE SHE JOINS WITH THEM, AND STANDS, OR FALLS, WITH THEM, AS THE CASE MAY BE.

THE MOVING SPIRIT IN THIS WHOLE MATTER IS PONZO. THE EVIDENCE OF ALL OF THE OTHER PETITIONERS CONTRADICTS, AND CONFLICTS WITH HIS. THEN THEY PROCEED TO CONFLICT WITH EACH OTHER. INDEED THIS WHOLE MATTER IS SO RIDDLED WITH CONTRADICTIONS AND CONFLICTING EVIDENCE THAT I AM FORCED TO THE CONCLUSION THAT NO ONE EXCEPT MISS CONTAVALLE EVEN ATTEMPTED TO TELL THE TRUTH. THERE IS CONFLICTING EVIDENCE ON SEEMINGLY IRRELEVANT MATTERS, SUCH AS THE METHOD OF TRANSPORTATION USED TO GET TO THE LAWYERS OFFICE. IF PEOPLE ARE UNWILLING TO TELL THE TRUTH WITH REGARD TO SUCH AN UNIMPORTANT ITEM THEN HOW CAN THEIR ANSWERS IN REPLY TO IMPORTANT AND RELEVANT QUESTIONS BE BELIEVED?

THERE IS AN ONUS ON PETITIONERS TO SATISFY THIS BOARD THAT THEIR ACTIONS ARE CLEAN AND UNHAMPERED. I AM NOT SATISFIED THAT SUCH IS THE CASE HERE. IN MANY CERTIFICATION APPLICATIONS ONE CONTAMINATED CARD IS SUFFICIENT TO CAST DOUBT ON THE WHOLE. THE PREPONDERANCE OF CONFLICTING EVIDENCE HERE, IN MY OPINION RAISES SERIOUS DOUBTS. AS A RESULT I WOULD HAVE DISMISSED THE PETITIONS AND CERTIFIED THE APPLICANT UNION.

11369-65-R: CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (APPLICANT) V. NEW SURPASS PETROCHEMICALS LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members E. Boyer and H. F. Irwin.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT, J. D. HILTON, F. EVANS AND K. EASTMAN FOR THE RESPONDENT, J. LAVICTOIRE AND S. MONTGOMERY FOR A GROUP OF EMPLOYEES.

DECISION OF J. H. BROWN, DEPUTY VICE-CHAIRMAN AND BOARD MEMBER E. BOYER: (MARCH 1, 1966).

- 1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION  $\hat{\mathbf{I}}$  (J) of The Labour Relations Act.
- 2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT.
- 3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT LABORATORY PERSONNEL ARE NOT INCLUDED IN THE BARGAINING UNIT.
- 4. JEAN LAVICTOIRE AND STUART MONTGOMERY, BOTH OF WHOM ARE EMPLOYEES OF THE RESPONDENT, GAVE EVIDENCE IN SUPPORT OF A DOCUMENT (HEREINAFTER REFERRED TO AS THE PETITION) SUBMITTED TO THE BOARD WHICH IS INDICATIVE OF OPPOSITION OF SOME OF THE EMPLOYEES OF THE RESPONDENT TO THIS APPLICATION. THE PETITION READS AS FOLLOWS:

WE THE UNDERSIGNED EMPLOYEE OF NEW SURPASS PETROCHEMICAL 36 UPTON ROAD, AFTER FURTHER CONSIDERATION HAVE DECIDED NOT TO HAVE THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 REPRESENT US IN FORMING A UNION.

WE HAVE DECIDED INSTEAD OF FORMING A SHOP COMMITTE TO LOOK AFTER OUR INTEREST.

BOTH LAVICTOIRE AND MONTGOMERY TESTIFIED THAT THE PETITION WAS PREPARED AND ALL THE SIGNATURES WERE SECURED ON IT IN THE LUNCH ROOM OF THE RESPONDENT ON THE MORNING OF FEBRUARY 10TH JUST PRIOR TO THE COMMENCEMENT OF THE 8:00 A.M. SHIFT.

NO MEMBERS OF MANAGEMENT WERE PRESENT WHEN THE PETITION WAS PREPARED AND CIRCULATED.

- 5. Lavictoire and Montgomery also testified that after the notice to the employees of the application for certification (form 5) was posted Kenneth Eastman the general superintendent of the respondent company notified them that there would be a meeting of the employees in his office at 4:00 p.m. on that day. The meeting was attended by Eastman, Fred Evans, the president of the company, and all of the employees. According to the evidence of Lavictoire the meeting lasted close to an hour. Montgomery testified that Evans opened the meeting by saying that he had received the union's certification application and that as far as he was concerned if the employees wanted a union they could have one. He then proceeded, however, to ask the employees why they wanted the union. It appears that some general conversation ensued between Evans and the employees concerning working conditions. During the course of the conversation, in reply to a direct question by Montgomery, Evans told the employees that if the union was not successful in its application the company would be prepared to deal with a shop committee of the employees.
- WHILE EVANS AT THE OUTSET OF THE MEETING TOLD THE EMPLOYEES THAT AS FAR AS HE WAS CONCERNED THEY COULD HAVE A UNION IF THEY WANTED ONE, IN THE LIGHT OF ALL THE EVIDENCE RELATING TO THE MEETING IT IS APPARENT THAT EVANS CONVEYED HIS DISAPPROVAL OF THE UNION TO THE EMPLOYEES. FURTHER, WHETHER OR NOT EVANS HELD THE MEETING WITH HIS EMPLOYEES FOR THE EXPRESS PURPOSE OF INFLUENCING THEM AGAINST THE UNION, WE ARE IMPELLED TO CONCLUDE THAT EVANS BY HIS REMARKS AND PARTICULARLY HIS PROMISE TO DEAL WITH A SHOP COMMITTEE OF THE EMPLOYEES, WHICH SIGNIFICANTLY IS REFERRED TO IN THE WORDING OF THE PETITION ITSELF, SO INFLUENCED THE EMPLOYEES THAT HE WAS, IN REALITY, THE INSTIGATOR OF THE PETITION. IN REACHING THIS CONCLUSION THE BOARD IS NOT UNMINDFUL OF THE RESPONSIVE NATURE OF THE RELATIONSHIP OF EMPLOYEES AND THEIR EMPLOYER AND THE VULNERABILITY OF EMPLOYEES TO BEING INFLUENCED BY THE WISHES OF THEIR EMPLOYER. THESE CONSIDERATIONS HAVE BEEN RECOGNIZED BY THE BOARD IN PREVIOUS DECISIONS (SEE PIGOTT MOTORS (1961) LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER VOL. 1, 416,264, C.L.S. 76-530; CENTRAL SUPERMARKETS LIMITED CASE, (1962) CCH CANADIAN LABOUR LAW REPORTER VO. 1, \$16,245, C.L.S. 76-865; PARNELL VENDING LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1965, p. 5). ACCORDINGLY, HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING ITS ORIGINATION, WE ARE NOT PREPARED TO ACCEPT THE PETITION AS REPRESENTING A TRUE EXPRESSION OF THE WISHES OF THE EMPLOYEES WHO SIGNED IT.
- 7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: (March 1, 1966).

I DISSENT.

I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE.

THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

11377-65-R: LOCAL UNION 2163 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. THE WARNOCK HERSEY COMPANY LTD. (RESPONDENT).

BEFORE: J. H. BROWN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRARY.

APPEARANCES AT THE HEARING: G. PETTA, K. Rose and M. Blanchard for the applicant, S. G. Fisher for the respondent.

DECISION OF THE BOARD: (March 4, 1966).

- 1. THE NAME "WARNOCK-HERSEY COMPANY LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE WARNOCK HERSEY COMPANY LTD."
- 2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION  $1\ (1)\ (j)$  of The Labour Relations Act.
- 3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF TESTING THE QUALITY OF MATERIALS FOR MANUFACTURERS AND USERS WHO RETAIN ITS SERVICES. IN ADDITION TO RADIOGRAPHERS THE RESPONDENT EMPLOYS SHOP INSPECTORS, FIELD INSPECTORS AND TECHNICIANS. ALL OF THE EMPLOYEES DO SOME FORM OF TESTING AND ARE DEPARTMENTALIZED ACCORDING TO THEIR PARTICULAR SKILLS. More Specifically, the respondent among others has a Concrete, CHEMICAL, PHYSICAL, SOILS, AND NON-DESTRUCTIVE DEPARTMENT. ALL OF THE RADIO-GRAPHERS AND RADIOGRAPHERS-IN-TRAINING ARE EMPLOYED IN THE LATTER DEPARTMENT. THE RESPONDENT HAS FORTY-TWO EMPLOYEES WHO WORK AT AND OUT OF METROPOLITAN TORONTO WHICH NUMBER INCLUDE FIVE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING. THE RESPONDENT ALSO HAS TWELVE EMPLOYEES WORKING AT AND OUT OF PREMISES IN HAMILTON WHICH INCLUDE THREE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING. IN ADDITION, THE RESPONDENT HAS A SMALL NUMBER OF EMPLOYEES IN WINDSOR, SAULT STE. MARIE AND PETERBOROUGH, NONE OF WHOM ARE RADIOGRAPHERS OR RADIOGRAPHERS-IN-TRAINING. THERE IS SOME TEMPORARY INTERCHANGE OF EMPLOYEES, PARTICULARLY BETWEEN THE HAMILTON AND TORONTO OPERATIONS OF THE RESPONDENT DEPENDING ON THE TESTING SKILLS REQUIRED FOR ANY PARTICULAR JOB.
- 4. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF RADIOGRAPHERS AND RADIOGRAPHERS—IN-TRAINING WHICH IT CLAIMS IS AN APPROPRIATE CRAFT UNIT. THE RESPONDENT SUBMITS THAT AN "ALL EMPLOYEE" UNIT WITH THE EXCEPTION OF SUPERVISORS AND OFFICE STAFF IS THE APPROPRIATE UNIT IN THE INSTANT APPLICATION.
- 5. In order to establish an entitlement to the unit which it proposes the applicant must comply with the provisions of section 6 (2) of the Act. More particularly, the applicant must satisfy the Board: (1) that the group of employees exercise technical skills or are members of a craft by reason of which they are distinguishable from other employees, (2) that they commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or craft, and (3) that the application is made by a union pertaining to such skills or craft. While the evidence lends support to a finding that radiographers exercise technical skills by reason of which are distinguishable from other employees there is no evidence of any history of radiographers bargaining separately and apart from other employees either in this

JURISDICTION OR IN ANY OTHER JURISDICTION. FURTHER, THE APPLICANT ADMITS THAT IT IS NOT A TRADE UNION WHICH HAS EVER BARGAINED EXCLUSIVELY FOR A UNIT OF RADIO-GRAPHERS AND RADIOGRAPHERS-IN-TRAINING. THE APPLICANT, ACCORDINGLY, HAS FAILED TO BRING ITSELF WITHIN THE PROVISIONS OF SECTION 6 (2) OF THE ACT. THE BOARD THEREFORE IS NOT PREPARED TO GRANT THE "CRAFT" UNIT WHICH THE APPLICANT IS SEEKING. WE WOULD MENTION FURTHER THAT THERE IS NO EVIDENCE BEFORE US WHICH, IN OUR VIEW, WOULD WARRANT A FINDING THAT THE UNIT PROPOSED BY THE APPLICANT IS OTHERWISE APPROPRIATE. RATHER, IN LIGHT OF THE EVIDENCE RELATING TO THE NATURE OF THE RESPONDENT'S BUSINESS, THE BOARD FINDS THAT AN "ALL EMPLOYEE" UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE PRESENT CASE.

- WITH REFERENCE TO THE GEOGRAPHIC AREA TO BE COVERED BY ANY BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD, THE RESPONDENT SUBMITS THAT HAVING REGARD TO THE INTERCHANGE OF EMPLOYEES BETWEEN LOCATIONS, THE UNIT SHOULD COVER ALL OF THE RESPONDENT'S EMPLOYEES IN ONTARIO. WHILE THE APPLICANT IS APPLYING IN THIS APPLICATION FOR A UNIT COVERING EMPLOYEES "WORKING IN AND OUT OF THE TORONTO office", AT THE BOARD HEARING ON MARCH 1ST, 1966, THE APPLICANT CONCURRED IN THE SUBMISSION OF THE RESPONDENT WITH RESPECT TO THE GEOGRAPHIC AREA TO BE COVERED BY ANY UNIT. THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN AN "ALL EMPLOYEE" BARGAINING UNIT EVEN IF IT WERE CONFINED TO THOSE EMPLOYEES WORKING AT AND OUT OF METRO-POLITAN TORONTO, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, HAVING REGARD TO THE MEMBERSHIP POSITION OF THE APPLICANT, IT IS NOT NECESSARY NOR DOES THE BOARD DEEM IT ADVIS-ABLE IN THIS APPLICATION TO MAKE A DETERMINATION THAT A PROVINCE-WIDE UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.
- 7. Having regard to the Board's finding in paragraph 6 with respect to the Evidence of membership filed by the applicant, the application is dismissed.

11378-65-R: Local Union 2163 of the International Brotherhood of Electrical Workers (Applicant) v. THE WARNOCK HERSEY COMPANY LTD. (RESPONDENT).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members D. B. Archer and F. W. Murray.

APPEARANCES AT THE HEARING:  $G_{\bullet}$  Petta,  $K_{\bullet}$   $G_{\bullet}$  Rose and  $M_{\bullet}$  Blanchard for the applicant,  $S_{\bullet}$   $G_{\bullet}$  Fisher for the respondent.

DECISION OF THE BOARD: (MARCH 4, 1966).

- 1. THE NAME "WARNOCK-HERSEY COMPANY LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "THE WARNOCK HERSEY COMPANY LTD."
- 2. The Board finds that the applicant is a trade union within the meaning of section 1 (1) (j) of The Labour Relations Act.
- 3. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL RADIOGRAPHERS AND RADIOGRAPHERS—IN-TRAINING WHICH IT CLAIMS IS AN APPROPRIATE

CRAFT UNIT. FOR THE SAME REASONS GIVEN BY THE BOARD IN THE WARROLK DIRITH LID. CASE, (BOARD FILE No. 11377-65-R) THE BOARD FINDS THAT AN "ALL EMPLOYEE" UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE INSTANT CASE.

- 4. The respondent submits that because of the evidence of temporary interchanging of employees, particularly between its Hamilton and Toronto operations, the unit should cover all of the employees of the respondent in Ontario. While the applicant is applying in this application for a unit covering employees "working in and out of the Hamilton office", at the Board hearing on March 1st, 1966, the applicant concurred in the submission of the respondent with respect to the geographic area to be covered by any unit. The Board is satisfied on the basis of the evidence before it that less than forty-five per cent of the employees in an "all employee" bargaining unit even if it were confined to those employees working at and out of Hamilton, at the time the application was made, were members of the applicant at the material times fixed in accordance with the Labour Relations Act and the Board's Rules of Procedure. Accordingly, having regard to the membership position of the applicant, it is not necessary nor does the Board deem it advisable in this application to make a determination that a province-wide unit is the appropriate unit for collective bargaining.
- 5. Having regard to the Board's finding in paragraph 4 with respect to the evidence of membership filed by the applicant, the application is dismissed.

11379-65-R: Local Union 2163 of the International Brotherhood of Electrical Workers (Applicant) v. NORTH AMERICAN INSPECTION SERVICES LIMITED (RESPONDENT) and Employees (Objectors).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members F. W. Murray and D. McDermott.

APPEARANCES AT THE HEARING: G. PETTA FOR THE APPLICANT, R. D. PERKINS AND P. COWAN FOR THE RESPONDENT, D. STEVENS AND M. HIRST FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MARCH 4, 1966).

- 1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION  $1\ (1)\ (j)$  OF THE LABOUR RELATIONS ACT.
- 2. THE APPLICANT IS APPLYING FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL RADIOGRAPHERS AND RADIOGRAPHERS—IN—TRAINING WORKING IN AND OUT OF THE OAKVILLE OFFICE OF THE RESPONDENT WHICH IT CLAIMS IS AN APPROPRIATE CRAFT UNIT. THE RESPONDENT SUBMITS THAT AN "ALL EMPLOYEE" UNIT WITH THE EXCEPTION OF SUPERVISORS AND OFFICE STAFF IS AN APPROPRIATE UNIT IN THE INSTANT APPLICATION.
- 3. As a preliminary objection the respondent challenged the jurisdiction of this Board to deal with the instant application alleging that the business of the respondent falls within the exclusive jurisdiction of the Canada Labour Relations Board. Let us assume for purposes of argument, but without making any determination, that this Board has jurisdiction with respect to the instant application. While there is some evidence that radiographers exercise technical skills by reason of whice

THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES THERE IS NO EVIDENCE OF RADIOGRAPHERS BARGAINING SEPARATELY FROM OTHER EMPLOYEES AND THE APPLICANT ADMITS THAT IT IS NOT A TRADE UNION WHICH HAS EVER BARGAINED EXCLUSIVELY FOR A UNIT OF RADIOGRAPHERS AND RADIOGRAPHERS—IN—TRAINING. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT HAS FAILED TO BRING ITSELF WITHIN THE PROVISIONS OF SECTION 6 (2) OF THE ACT AND IS NOT ENTITLED TO THE "CRAFT" UNIT WHICH IT IS SEEKING (SEE THE WARNOCK HERSEY COMPANY LTD. CASE, BOARD FILE NO. 11377-65-R). THE BOARD FINDS RATHER THAT AN "ALL EMPLOYEE" UNIT IS THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE PRESENT CASE.

- 4. THE LIST OF EMPLOYEES FIRED BY THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION, FEBRUARY 8TH, 1966, CONTAINS THE NAMES OF FOUR EMPLOYEES, ALL OF WHOM ARE RADIOGRAPHERS OR RADIOGRAPHERS-IN-TRAINING. AS OF THE DATE OF APPLICATION. HOWEVER, TWO ADDITIONAL RADIOGRAPHERS WHO ARE REGULARLY EMPLOYED BY THE RESPONDENT AT OAKVILLE WERE TEMPORARILY WORKING OUT OF THE MONTREAL OFFICE OF THE RESPONDENT. ONE OF THESE EMPLOYEES WAS ABSENT FROM THE OAKVILLE OFFICE OF THE RESPONDENT FROM FEBRUARY 1ST TO FEBRUARY 15TH. 1966 AND THE OTHER WAS ABSENT FROM THE OAKVILLE OFFICE OF THE RESPONDENT FROM JANUARY 19TH TO FEBRUARY 26TH, 1966. IN ADDITION TO THE RADIOGRAPHERS AND RADIOGRAPHERS-IN-TRAINING THERE ARE THREE OTHER EMPLOYEES WHO ARE ELIGIBLE FOR INCLUSION IN AN "ALL EMPLOYEE" UNIT OF THE RESPONDENT AT OAKVILLE. ACCORDINGLY, THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING BY THE BOARD FOR THE PURPOSE OF THE COUNT IS SEVEN OR NINE DEPENDING ON WHETHER THE TWO RADIOGRAPHERS WHO WE'RE WORKING OUT OF THE MONTREAL OFFICE OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION ARE INCLUDED OR EXCLUDED FROM THE UNIT. IF THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT IS SEVEN. THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR ONLY THREE EMPLOYEES IN THE UNIT. IF THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT IS NINE, THE APPLICANT HAS EVIDENCE OF MEMBERSHIP FOR ONLY FOUR EMPLOYEES IN THE UNIT. IN OTHER WORDS, WHETHER THERE ARE SEVEN OR NINE EMPLOYEES IN THE UNIT FOR THE PURPOSE OF THE COUNT, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. ACCORDINGLY, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION WITH RESPECT TO WHETHER THE TWO EMPLOYEES WHO WERE WORKING OUT OF THE RESPONDENT'S OFFICE AT MONTREAL ON THE DATE OF THE MAKING OF THE APPLICATION ARE INCLUDED OR EXCLUDED FROM THE BARGAINING UNIT FOR THE PURPOSE OF THE COUNT.
- 5. FURTHER, IN VIEW OF THE MEMBERSHIP POSITION OF THE APPLICANT, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY DETERMINATION ON THE QUESTION OF ITS JURISDICTION RAISED BY THE RESPONDENT OR TO MAKE ANY FURTHER INQUIRY WITH RESPECT TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE WHICH WAS FILED WITH THE BOARD IN OPPOSITION TO THIS APPLICATION.
- 6. HAVING REGARD TO THE BOARD'S FINDING IN PARAGRAPH 4 WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, THE APPLICATION IS DISMISSED.

<sup>11412-6:-</sup>B: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ONTARIO STEEL PRODUCTS COMPANY LIMITED (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, W. CORNWALL AND M. ANDRYC FOR THE APPLICANT, JAMES N. BARTLET,  $Q_*C_*$ , B. D. PARK AND W. S. CAMPBELL FOR THE RESPONDENT, J. S. BOECKH,  $Q_*C_*$ , and T. F. EDMONDSON FOR THE OBJECTORS.

DECISION OF THE BOARD: (MARCH 8, 1966).

- 1. This is an application for certification in which the objectors filed a document signed by employees of the respondent who opposed the application.
- 2. WHILE THE OBJECTORS FAILED TO CAUSE SUFFICIENT MEMBERS OF THE APPLICANT TO SIGN THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION TO MATERIALLY AFFECT THE MEMBERSHIP POSITION OF THE APPLICANT, THE DOCUMENT CONTAINED THE FOLLOWING STATEMENT:

"WE BELIEVE THAT IN SOME INSTANCES UNDUE PRESSURE AND MISREPRESENTATION AS TO ATTITUDE OF OTHER EMPLOYEES WAS USED TO OBTAIN SIGNATURES"

- 3. THE APPLICANT DID NOT REQUEST PARTICULARS OF THE ALLEGATIONS CONTAINED IN THE PETITION PRIOR TO THE HEARING, HOWEVER, AT THE HEARING, THE APPLICANT ARGUED THAT SINCE THE CHARGES WERE NOT PARTICULARIZED AS REQUIRED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE THE OBJECTORS SHOULD NOT BE PERMITTED TO ADDUCE EVIDENCE IN SUPPORT OF THE ALLEGATIONS.
- 4. While the Board conceded that the charges contained in the petition were so indefinite or incomplete as to hamper the applicant in meeting such charges, the Board was also of opinion that the applicant should have taken advantage of section 47 (2) of the Board's Rules of Procedure and should have requested the objectors to supply particulars of the allegations made. The Board therefore refused to strike the allegations from the document filed in opposition to the application. However, the Board directed the objectors to file forthwith a statement of particulars as required by section 48 of the Board's Rules of Procedure. The following are the particulars filed at the hearing in accordance with the Board's direction.

"ON SATURDAY, FEBRUARY 12, 1966, ONE DON CARTER ORGANIZING ON BEHALF OF THE UNION, APPROACHED AN EMPLOYEE, GEORGE RISEBOROUGH, AND IN INDUCING HIM TO JOIN THE UNION MIS-REPRESENTED TO HIM THAT 95 PER CENT OF THE EMPLOYEES HAD JOINED AND THAT ONE LINDA LILLY, IN PARTICULAR, HAD JOINED. BOTH STATEMENTS WERE FALSE."

THE PARTIES AGREED THAT DON CARTER, WHO IS REFERRED TO IN THE PARTICULARS WAS AN EMPLOYEE OF THE RESPONDENT AND NOT A PAID OFFICIAL OF THE APPLICANT.

5. At the request of the applicant the Board invited the parties to argue whether, if the particulars are proved by evidence they could materially affect the outcome of this application. If the Board was to decide that the result of this case would be materially affected, the parties would then be provided with an opportunity to call evidence with respect to the allegations contained in the petition as particularized above.

- 6. THE BOARD IS OF OPINION THAT IF EVIDENCE WERE CALLED TO SUBSTANTIATE THE FACTS AS ALLEGED IN THE PARTICULARS WE WOULD HAVE AN ISOLATED CASE OF AN EMPLOYEE WHO. IN HIS ENTHUSIASM TO SUPPORT THE APPLICANT UNION. MADE TWO UNTRUE STATEMENTS. THE FIRST, THAT 95% OF THE EMPLOYEES HAD JOINED THE APPLICANT UNION, WHEREAS IT WOULD APPEAR THAT AT THE TIME THE APPLICATION WAS MADE, THE APPLICANT HAD APPROXIMATELY 66% OF THE EMPLOYEES AS MEMBERS. THE SECOND UNTRUTH WOULD APPEAR TO BE THAT IT WAS ALLEGED THAT ONE EMPLOYEE WAS A MEMBER OF THE UNION WHEN IN FACT SUCH PERSON WAS NOT A MEMBER. NEITHER OF THESE UNTRUTHS COULD BE CONSTRUED AS COERCION, INTIMIDATION, THREATS OR UNDUE INFLUENCE BUT COULD BEST BE CONSTRUED AS "PUFFING". IF A PERSON TO WHOM THESE STATEMENTS WERE MADE CONSIDERED SUCH STATEMENTS VITAL TO HIS JOINING THE APPLICANT UNION FURTHER INQUIRIES WOULD. AS THEY SUBSEQUENTLY DID. DISCLOSE THE TRUTH. THE BOARD IS THEREFORE OF OPINION THAT EVEN IF THE FACTS IN SUPPORT OF THE ALLEGATIONS WERE PROVED THEY WOULD NOT ADVERSELY AFFECT THE APPLICANT S MEMBERSHIP POSITION. SINCE THERE IS NO ALLEGATION, AND NOTHING FROM WHICH THE BOARD COULD REASONABLY DRAW THE INFERENCE. THAT THESE UNTRUTHS WERE PART OF A PATTERN OF CONDUCT EMPLOYED BY THE APPLICANT, SUCH UNTRUTHS COULD ONLY ADVERSELY AFFECT THE MEMBERSHIP EVIDENCE OF ONE MEMBER. EVEN IF THIS CARD WERE DISCOUNTED THE APPLICANT WOULD STILL BE IN A POSITION WHEREIN IT WOULD BE ENTITLED TO OUTRIGHT CERTIFICATION.
- 7. THE BOARD THEREFORE FINDS THAT THERE IS NO SUBSTANCE IN THE ALLEGATIONS MADE BY THE OBJECTORS WHICH COULD CONCEIVABLE AFFECT THE OUTCOME IN THIS CASE.

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11415-65-R: INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA, Local 506 (Applicant) v. 20TH CENTURY MASONRY COMPANY (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. W. FORGIE AND MARINO TOPPAN FOR THE APPLICANT; ANTONIO GREGORIS AND PIO GUARIN FOR THE RESPONDENT; AND LODINO DIVINCENZO, E. ZANELLA, A. DIFONSO AND GERARDO PECCHIA APPEARING ON THEIR OWN BEHALF.

DECISION OF THE BOARD: (March 2, 1966).

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3. The Board further finds that this is an application for certification within the meaning of section 92 of The Labour Relations Act.

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5. At the hearing held in this matter the Board heard evidence respecting the circumstances surrounding the origination and signing of three statements of objection filed by three employees within the times fixed in accordance with The Labour Relations act and the Board's Rules of Procedure. In addition, evidence was heard respecting allegations of misrepresentation on the part of a representative of the applicant during the organizational campaign.

- 6. THE BOARD HAS NO HESITATION IN FINDING THAT THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION BY LODINO DIVINCENZO MUST BE ACCORDED FULL WEIGHT AND ACCORDINGLY FINDS THAT DOUBT IS CAST ON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT FOR THE SAID DIVINCENZO. ON THE OTHER HAND, HAVING REGARD TO THE ACTIVE SUPPORT OF REPRESENTATIVES OF MANAGEMENT IN THE PREPARATION OF THE STATEMENTS OF OBJECTION FILED BY EDGARDO ZANELLA AND ANTONIO DIFONSO AND TO THE FURTHER FACT THAT THE SAID REPRESENTATIVES WERE FULLY AWARE THAT THEY OUGHT NOT TO HAVE GIVEN SUCH SUPPORT, WE ARE UNABLE TO FIND THAT THE TWO STATEMENTS OF OBJECTION IN QUESTION CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT ON BEHALF OF THE SAID ZANELLA AND DIFONSO. IT IS CLEAR, THEN, THAT EVEN THOUGH DOUBT IS CAST ON THE MEMBERSHIP EVIDENCE OF DIVINCENZO, THE REMAINING EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IS FOR MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.
- ALTHOUGH ZANELLA AND ONE, GERARDO PECCHIA, SUBMITTED WRITTEN ALLEGATIONS OF MISREPRESENTATION, THEIR SWORN TESTIMONY BEFORE THE BOARD DOES NOT REVEAL ANY IMPROPRIETY BY THE APPLICANT'S REPRESENTATIVE. NOR ARE WE PREPARED TO FIND, AFTER CONSIDERING ALL THE EVIDENCE BEFORE US, THAT THE ALLEGATIONS OF ANTONIO DIFONSO HAVE BEEN PROVED. IN THIS RESPECT THE EVIDENCE OF DIFONSO WAS UNSATISFACTORY, PARTICULARLY HIS INABILITY TO RECALL THE EXACT WORDS WHICH HE ALLEGED WERE USED BY THE APPLICANT'S REPRESENTATIVE. IN ANY EVENT, IT WOULD APPEAR THAT DIFONSO HIMSELF WAS LABOURING UNDER A MISUNDERSTANDING SINCE HE BASED HIS CLAIM OF MISREPRESENT-ATION ON THE STATEMENTS OF OTHER EMPLOYEES THAT ONLY TWO EMPLOYEES HAD SIGNED MEMBERSHIP CARDS FOR THE UNION WHEREAS, AT THE TIME HE HIMSELF SIGNED, SIX OTHER PERSONS OUT OF A TOTAL OF NINE EMPLOYEES (ON THE DATE OF THE MAKING OF THE APPLICATION) HAD IN FACT "SIGNED UP" FOR THE UNION. FINALLY, EVEN IF WE ARE TO ASSUME THAT THE APPLICANT S REPRESENTATIVE MADE THE STATEMENTS WHICH DIFONSO CLAIMS WERE MADE, SUCH STATEMENTS HAVE USUALLY BEEN REGARDED BY THE BOARD AS MERE "PUFFING" NORMALLY ASSOCIATED WITH ORGANIZATIONAL CAMPAIGNS. IN ANY EVENT, THE STATEMENT WAS IN THIS CASE SUBSTANTIALLY TRUE.
- 8. Having regard to all the above considerations and findings, the Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant at the material times fixed in accordance with the Labour Relations act and the Board's Rules of Procedure.
- 9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11427-65-R: International Union of Operating Engineers, Local 793 (Applicant) v. THUNDER BAY HARBOR IMPROVEMENTS LIMITED (RESPONDENT) AND LUMBER & SAWMILL WORKERS UNION - Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Intervener).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (March 29, 1966).

- 1. No statement of objections and desire to make representations has been filed with the Board within the time fixed under subsection 1 of section 44 and subsection 3 of section 58 of the Board's Rules of Procedure following the taking of the representation vote pursuant to the Board's direction of March 1, 1966, in this matter.
- 2. On the taking of the Representation vote directed by the Board, more than fifty per cent of the Ballots of all those eligible to vote in the voting constituency defined in paragraph seven of the Board's decision of March 1, 1966 were cast in favour of the applicant, International Union of Operating Engineers, Local 793.
- 3. Because of the wording of the collective agreement in this case, the Board was obliged to set a voting constituency instead of a bargaining unit in its decision ordering a representation vote. It is now necessary to determine an appropriate bargaining unit. In applications in the construction industry involving the present applicant its usual practice is to exclude "non-working foremen" rather than "foremen". In these circumstances the Board, therefore, further finds that all employees of the respondent in the District of Thunder Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the reparing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.
- 4. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

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11433-65-R: Bakery & Confectionery Workers! International Union of America, Local 264 (Applicant) v. OLYMPIA HOME BAKERY (Respondent) and Group of Employees (Objectors).

BEFORE: RORY F. EGAN, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: Ne:L GROCUTT FOR THE APPLICANT, T. F. STORIE AND N. PANTELIDIS FOR THE RESPONDENT, AND RETA GROLIAS AND CUR BROUMAS FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MARCH 9, 1966).

1. This is an application for certification in opposition to which there was filed a statement of desire, or petition, signed by three employees of the respondent. The evidence clearly indicates that the petition was prepared on the instructions of management. In these circumstances, the Board is not prepared to find that the petition weakens the evidence of membership submitted by the applicant.

2. Counsel for the respondent submitted that none of the employees concerned could speak English and that this raised a doubt as to whether they understood the import of their actions in signing membership cards. It was his suggestion that this element of doubt could be removed by the holding of a representation vote. He made it quite clear that he was not making any allegations of impropriety. In the absence of any evidence and without deciding whether, if such were forthcoming, it might properly be received at this stage in the proceedings, the Board is not prepared to find that the submission in any way affects the evidence of membership submitted by the applicant.

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11435-65-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION # 1071 (APPLICANT) v. MOLLENHAUER CONTRACTING COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (March 2, 1966).

1. The fact that the job affected by the application may be finished or may be close to termination after the filing of an application for certification it is not a factor which this Board takes into consideration in reaching a decision on such an application. Reference is made to the Nadeco Limited case, 0.L.R.B. Monthly Report, February 1964, p. 608. Furthermore the Board is prohibited by section 92 (1) of the Labour Relations Act from confining a bargaining unit to a particular project. Having regard to these considerations and to the provisions of section 75 (9a) of the Labour Relations Act, the Board does not deem it Advisable to hold a hearing in this case.

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11445-65-R: KEMP PRODUCTS EMPLOYEES ASSOCIATION (APPLICANT) v. KEMP PRODUCTS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: Leo J. Gent for the applicant, James G. Steele for the respondent.

DECISION OF THE BOARD: (MARCH 10, 1966).

1. This is an application for certification made on February 23, 1966, in which all the membership documents filed by the applicant consisted of membership cards signed by the applicant's members and countersigned by an officer of the applicant. There was nothing in writing signed by the members which would indicate that there had been any money payment or other financial sacrifice required of the members on joining the applicant.

- 2. It is the Board's well established policy to require that documentary evidence of membership of an applicant include documentary evidence of money payment or other financial sacrifice. Section 50 of the Board's Rules of Procedure requires that such documentary evidence of membership must be filed by the applicant prior to the terminal date of the application. Since the terminal date of this application was March 3rd, 1966, no new documentary evidence of membership can be filed by the applicant.
- 3. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT DEEM TO BE APPROPRIATE AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD SRULES OF PROCEDURE.
- 4. THE APPLICATION IS THEREFORE DISMISSED.

11455-65-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. GENERAL IMPACT EXTRUSIONS (MANUFACTURING LTD. (RESPONDENT) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: T. E. ARSMTRONG, R. WHITE AND J. PAWSON FOR THE APPLICANT, D. CHURCHILL-SMITH AND F. N. DEWJS FOR THE RESPONDENT, AND NO ONE APPEARING FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: (MARCH 30, 1966).

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- 3. This is an application for certification in which the applicant sought certification as bargaining agent for a unit of employees described as "all employees of the Respondent (including its Xyno Plastics Div.) employed at its plant in Metropolitan Toronto, save and except foremen, persons above the rank of foremen, office and sales staff".
- 4. IN ITS REPLY TO APPLICATION FOR CERTIFICATION THE RESPONDENT (HEREINAFTER CALLED "GENERAL IMPACT") STATED, "THE RESPONDENT WOULD POINT OUT THAT IT ALSO CARRIES ON BUSINESS AT 191 EVANS AVENUE UNDER A SEPARATE CORPORATE IDENTITY, NAMELY XYNO PLASTICS LIMITED. THIS COMPANY IS ENGAGED IN THE MANUFACTURE OF PLASTIC INJECTION MOULDINGS AND EMPLOYS A TOTAL PAYROLL OF 8 PERSONS, 6 OF WHOM FALL WITHIN THE DESCRIPTION OF THE GENERAL BARGAINING UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION." THE SIX PERSONS SAID TO FALL WITHIN THE BARGAINING UNIT ARE LISTED ON THE SCHEDULES FILED BY GENERAL IMPACT AND ARE IDENTIFIED BY THE WORD "XYNO" WRITTEN OPPOSITE EACH NAME ON THE LISTS.
- 5. GENERAL IMPACT AND XYNO PLASTICS LIMITED (HEREINAFTER REFERRED TO AS "XYNO") OCCUPY THE SAME PREMISES AT 191 EVANS AVENUE. ALL EMPLOYEES ARE PAID BY GENERAL IMPACT WHICH LATER RECOVERS FROM XYNO THE WAGES PAID BY IT TO THE EMPLOYEES OF THE LATTER COMPANY. THE CONTROL AND DIRECTION OF THE SIX EMPLOYEES, HOWEVER, IS RETAINED BY XYNO WHICH SUPPLIES SEPARATE SUPERVISION FOR THEM. THERE IS NO INTERCHANGE OF EMPLOYEES BETWEEN THE TWO COMPANIES.

- 6. ON THE BASIS OF THE FOREGOING THE BOARD FINDS THAT THE SIX PERSONS IDENTI-FIED ON THE LISTS SUPPLIED BY GENERAL IMPACT BY THE WORD "XYNO" ARE EMPLOYEES OF XYNO PLASTICS LIMITED, A SEPARATE ASSOCIATE CORPORATION, AND NOT OF GENERAL IMPACT, AND CONSEQUENTLY ARE NOT TO BE CONSIDERED IN THE DETERMINATION OF THE BARGAINING UNIT STRENGTH OR MEMBERSHIP STATUS WITH RESPECT TO EMPLOYEES OF GENERAL IMPACT.
- 7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 8. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT ALBERT HOGG AND WILLIAM SEYMOUR, DESCRIBED AS "PLANT CLERICALS", ARE NOT INCLUDED IN THE BARGAINING UNIT.
- 9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- 10. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT AT GENERAL IMPACT EXTRUSIONS (MANUFACTURING) LTD. DESCRIBED IN PARAGRAPH 7 HEREOF.
- 11. WITH RESPECT TO THE MATTER OF THE APPLICANT AND XYNO PLASTICS LIMITED, THE BOARD IS SATISFIED THAT DUE TO THE CIRCUMSTANCES OF THE COMMON OCCUPANCY OF THE PLANT BY XYNO AND GENERAL IMPACT EMPLOYEES, COUPLED WITH THE PAYMENT OF XYNO EMPLOYEES BY GENERAL IMPACT, A BONA FIDE MISTAKE HAS BEEN MADE BY THE APPLICANT WITH THE RESULT THAT THE PROPER PARTY RESPONDENT HAS BEEN INCORRECTLY NAMED WITH RESPECT TO THE SIX XYNO EMPLOYEES WHOM THE APPLICANT SOUGHT TO REPRESENT AS EMPLOYEES OF WHAT IT BELIEVED TO BE THE XYNO PLASTICS DIVISION OF GENERAL IMPACT.
- 12. Having in Mind the foregoing, together with the provisions of section 78 of the Act, and it having been agreed by counsel for the parties before the Board that the Board should treat the Xyno Plastics Limited aspect of the whole Matter as constituting a separate application for certification, the Board makes the following findings with respect to international Union, United Automobile Aerospace and Agricultural implement Workers of America (UAW), applicant, and Xyno Plastics Limited, respondent.
- 13. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1 (1) (J) OF THE LABOUR RELATIONS ACT.
- 14. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
- 15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING

UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT AT XYNO PLASTICS LIMITED, DESCRIBED IN PARAGRAPH 14 HEREOF.

11475-65-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. INDIAN RESIDENTIAL SCHOOL, FORT FRANCES, ONTARIO, ADMINISTERED FOR THE INDIAN AFFAIRS BRANCH OF THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION, GOVERNMENT OF CANADA, BY THE OBLATE FATHERS (RESPONDENT).

BEFORE: Rory F. Egan, Deputy Vice-Chairman, and Board Members E. Boyer and H. F. Irwin.

APPEARANCES AT THE HEARING: P. J. O'Keeffe and R. J. Anderson for the APPLICANT, and R. M. L. Innes for the Respondent.

DECISION OF THE BOARD: (March 23, 1966).

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- 2. THIS IS AN APPLICATION FOR CERTIFICATION.
- 3. THE APPLICANT FAILED TO FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 9 AS REQUIRED BY SECTION 6 OF THE BOARD'S RULES OF PROCEDURE.
- 4. FORM 9 IS AN INDISPENSABLE PART OF THE EVIDENCE RELATING TO THE PROOF OF MEMBERSHIP REQUIRED BY THE BOARD AND ITS ABSENCE IS FATAL TO THE APPLICATION.
- 5. THE APPLICATION IS, ACCORDINGLY, DISMISSED.

11525-65-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) v. ATCO INDUSTRIES LTD. (RESPONDENT).

BEFORE: G. W. Reed, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (March 28, 1966).

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- 5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
- 6. The respondent has requested a hearing on the following grounds: (1) that there are only two employees who would fall into the bargaining unit of carpenters and carpenters! Apprentices, save and except non-working foremen, whereas the applicant in its application alleged that there were five persons in the bargaining unit, (2) that the Board should limit the area of certification to its normal area rather than to the area proposed by the applicant.

THE APPLICANT, BUT INSTEAD WILL GRANT ITS NORMAL AREA, THAT IS, THE DISTRICT OF KENORA. THAT LEAVES, THEN, GROUND NUMBER ONE ONLY AS A REASON FOR PUTTING THE CASE ON FOR HEARING. ACCORDING TO THE FORM 60, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, FILED BY THE APPLICANT, THERE WERE ONLY THREE PERSONS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION AND NOT FIVE AS SUGGESTED IN PARAGRAPH 7 OF FORM 54, APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY. IT THUS APPEARS THAT THE PARTIES ARE ONLY APART BY ONE PERSON. THAT PERSON IS CLAIMED BY THE APPLICANT TO BE A CARPENTER AND BY THE RESPONDENT TO BE A LABOURER. IF THE EMPLOYEE IN QUESTION IS IN FACT A CARPENTER, THE APPLICANT UNION WOULD THEN HAVE ALL THREE PERSONS IN THE BARGAINING UNIT AS MEMBERS. IF, ON THE OTHER HAND, THE EMPLOYEE IN QUESTION IS A LABOURER, THEN THE APPLICANT UNION WOULD HAVE THE TWO PERSONS IN THE BARGAINING UNIT AS MEMBERS. REGARDLESS OF WHETHER THE ONE DISPUTED EMPLOYEE IS A CARPENTER OR A LABOURER, THE APPLICANT HAS ONE HUNDRED PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS.

THE RESPONDENT HAS INFORMED THE BOARD THAT NONE OF THE THREE EMPLOYEES IN QUESTION ARE AT PRESENT EMPLOYED BY IT AND THAT IT DOES NOT ANTICIPATE EMPLOYING ANY OTHERS IN THE FUTURE IN THE AREA AFFECTED BY THE APPLICATION. THE FACT THAT THE EMPLOYER DOES NOT HAVE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE BOARD WOULD ISSUE A CERTIFICATE HAS NOT BEEN HELD BY THE BOARD TO BE A GROUND FOR REFUSAL TO ISSUE A CERTIFICATE, PROVIDING ALL THE BOARD'S OTHER REQUIREMENTS HAVE BEEN MET. SEE TRIO CARPENTERS (CONTRACTORS) CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1962, p. 333 AND MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, BOARD FILE NUMBER 11414-65-R.

HAVING REGARD TO ALL THE ABOVE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THERE IS NO NECESSITY FOR HOLDING A HEARING IN THIS CASE.

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11535-65-R: Brotherhood of Painters, Decorators & Paperhangers of America - Local Union 1891 (Applicant) v. LUX WHITMORE PAINTING COMPANY (RESPONDENT).

BEFORE: G. W. REED, Q. C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (March 25, 1966).

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 $4_{\bullet}$  The Board further finds that this is an application for certification within the meaning of section 92 of The Labour Relations Act.

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6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

IN MAKING THE ABOVE FINDING THE BOARD DID NOT TAKE INTO CONSIDERATION THE STATEMENT OF MEMBERSHIP CONCERNING TWO MEMBERS. THIS STATEMENT DOES NOT MEET THE BOARD'S STANDARDS REGARDING MEMBERSHIP EVIDENCE IN THAT THERE IS NOTHING BEFORE THE BOARD SIGNED BY THE EMPLOYEES IN QUESTION. REFERENCE IS MADE TO THE HEWSON AND SON, PLASTERERS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, p. 510.

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11540-65-R: INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 527 (AFL-CIO) (CLC) (APPLICANT) v. FEDERAL TILE COMPANY LIMITED (RESPONDENT).

BEFORE: G. W. Reed, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS G. RUSSELL HARVEY AND R. W. TEAGLE.

DECISION OF THE BOARD: (March 29, 1966).

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- 4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
- 5. IN ITS REPLY THE RESPONDENT REQUESTED A HEARING ON TWO GROUNDS. THE FIRST OF THESE RELATES TO THE EMPLOYMENT STATUS OF CERTAIN EMPLOYEES WHO WOULD FALL INTO THE PROPOSED BARGAINING UNIT. THREE OF THE EMPLOYEES WHO WORKED ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY, MARCH 18TH, 1966, WERE LAID OFF AT THE END OF THAT DAY AND APPARENTLY WILL NOT BE REHIRED. TWO EMPLOYEES WERE LAID OFF PRIOR TO MARCH 18, 1966 AND WILL NOT BE REHIRED. ANOTHER EMPLOYEE WAS TO BE LAID OFF ON MARCH 25, 1966 AND WILL NOT BE REHIRED. THE RESPONDENT ALSO POINTS OUT THAT IT HAS ONLY TWO PERMANENT LABOURERS AND THAT THESE OTHER LABOURERS CHANGE AS REQUIRED BY THE COURSE OF ITS OPERATIONS.

Under section 7 (1) of the Labour Relations Act, the Board ascertains the number of employees in the bargaining unit for the purposes of the count "at the time the application was made" which in this case was March 18, 1966. Consequently, in ascertaining in the present case the number of persons in the bargaining unit for the purposes of the count, the Board would not take into consideration those persons laid off prior to that time, but it would take into account employees actually working on March 18, 1966. Lay offs subsequent to March 18, 1966 cannot affect the position of the applicant in so far as the count is concerned. On March 18, 1966, there were nine employees in the bargaining unit working for the respondent. The applicant has as members six of the said nine employees. Under the provisions of section 7 (2) of the Labour Relations Act the applicant is thus entitled to be certified without a representation vote.

THE SECOND GROUND ON WHICH THE RESPONDENT REQUESTED A HEARING IS THAT IT "QUESTIONS THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED BY THE UNION". THE RESPONDENT HAS SUBSEQUENTLY INFORMED THE BOARD THROUGH ITS SOLICITOR THAT IT IS NOT MAKING CHARGES OR FILING PARTICULARS WITH RESPECT THERETO.

HEARING IS NOT REQUIRED IN THE PRESENT CASE. REFERENCE IS MADE TO SECTION 75 (9a) OF THE LABOUR RELATIONS ACT.

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#### INDEXED ENDORSEMENTS - TERMINATION

11335-65-R: ROBERT CAMPBELL, ON HIS OWN BEHALF AND ON BEHALF OF THE EMPLOYEES' OF PARRY SOUND GENERAL HOSPITAL (APPLICANT) v. LOCAL 866, OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

BEFORE: J. D. O'Shea, Deputy Vice-Chairman, and Board Members D. McDermott and F. W. Murray.

APPEARANCES AT THE HEARING: WILLIAM S. COOK, ROBERT CAMPBELL AND VIOLET CRAWFORD FOR THE APPLICANT, T. E. ARMSTRONG AND W. ACTON FOR THE RESPONDENT.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY. (MARCH 3, 1966).

- 1. This is an application for a declaration terminating the bargaining rights of the respondent pursuant to the provisions of section 43 of The Labour Relations Act.
- 2. THE APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS (FORM 18) WAS IN THE STYLE SET OUT ABOVE AND THE ADDRESS OF THE APPLICANT IN FORM 18 WAS STATED TO BE 68 WILLIAM STREET, PARRY SOUND, ONTARIO. THE INAME AND ADDRESS OF THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THE APPLICATION WAS STATED TO BE PARRY SOUND GENERAL HOSPITAL, JAMES STREET, PARRY SOUND, ONTARIO.
- 3. However, the signature for the applicant on Form 18 was signed by the applicant's solicitor under the following words which were typed on the Form:

"Parry Sound General Hospital By its Solicitors: Mathews, Dinsdale & Clark Per:"

- 4. THE RESPONDENT RAISED A PRELIMINARY OBJECTION TO THIS APPLICATION AND ARGUED THAT WHILE THE APPLICATION WAS STYLED IN THE NAME OF THE EMPLOYEES OF THE EMPLOYER, THE APPLICATION ON ITS FACE WAS SIGNED FOR THE APPLICANT BY THE EMPLOYER.
- 5. THE APPLICANT'S SOLICITOR, AT THE HEARING, ADVISED THAT HE HAD OBTAINED INSTRUCTIONS FROM ROBERT CAMPBELL AND HAD PERSONAL KNOWLEDGE OF THE MATTER. THE APPLICANT'S SOLICITOR TOOK THE POSITION THAT THE RESPONDENT'S OBJECTION WAS BASED SOLELY UPON A TYPOGRAPHICAL ERROR ON THE PART OF A STENOGRAPHER IN THE OFFICE OF THE SOLICITORS FOR THE APPLICANT AND THAT HE WAS PERSONALLY EMBARRASSED OVER THE FACT THAT THIS ERROR WAS NOT NOTICED BY HIM. THE RESPONDENT ACCEPTED THIS EXPLANATION AS EVIDENCE IN THIS CASE.
- 6. THE APPLICANT'S SOLICITOR FURTHER ADVISED THAT NEITHER HE, NOR ANY OTHER MEMBER OF HIS FIRM EVER ACTED FOR OR ON BEHALF OF PARRY SOUND GENERAL HOSPITAL. IT WOULD APPEAR, HOWEVER, THAT THE APPLICANT'S SOLICITOR HAD ACTED FOR EMPLOYEES

OF PARRY SOUND GENERAL HOSPITAL IN A PREVIOUS APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT APPROXIMATELY TWO YEARS AGO. THE EVIDENCE WAS THAT THE EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL CONTACTED A LOCAL SOLICITOR IN PARRY SOUND WHO DISCLAIMED SUFFICIENT KNOWLEDGE OF LABOUR RELATIONS MATTERS AND REFERRED THE EMPLOYEES TO THE APPLICANT'S PRESENT SOLICITOR.

- 7. THE BOARD IS SATISFIED THAT THE RESPONDENT'S OBJECTION IS IN FACT BASED ON A TYPOGRAPHICAL ERROR AND THAT THE SOLICITORS WHO COMPLETED FORM 18 INTENDED TO DO SO ON BEHALF OF THE APPLICANT DESCRIBED IN THE STYLE OF CAUSE IN THIS MATTER. THE BOARD IS THEREFORE OF OPINION THAT THE ERROR IN THE APPLICATION FORM IS A TECHNICAL DEFECT OR IRREGULARITY WITHIN THE MEANING OF SECTION 86 OF THE LABOUR RELATIONS ACT AND IS NOT SUCH AS WOULD INVALIDATE THE PROCEEDINGS AND THAT NO SUBSTANTIAL WRONG OR MISCARRIAGE OF JUSTICE WOULD OCCUR BY PROCESSING THIS APPLICATION ON ITS MERITS.
- 8. ROBERT CAMPBELL TESTIFIED THAT THE DOCUMENT SIGNIFYING IN WRITING THAT THE EMPLOYEES WHO SIGNED NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT, WAS PREPARED ON HIS INSTRUCTIONS BY THE APPLICANT'S SOLICITOR AND THAT HE WITNESSED ALL THE SIGNATURES ON THE DOCUMENT OUTSIDE OF THE EMPLOYER'S PREMISES WITHOUT ANY INTERFERENCE OR ASSISTANCE BY THE EMPLOYER. WHILE IT IS ACKNOWLEDGED THAT ROBERT CAMPBELL WAS NOT THE MOST LUCID WITNESS, HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF PARRY SOUND GENERAL HOSPITAL IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.
- 9. The Board directs that a representation vote be taken of the employees of Parry Sound General Hospital. Those eligible to vote are all employees of Parry Sound General Hospital at Parry Sound, save and except professional medical staff, graduate nursing staff, undergraduate nurses, certified nursing assistant students, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, office staff, persons regularly employed for not more than 24 hours per week and students employed for the school vacation period, on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is
- 10. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM TECHNICAL PERSONNEL AS USED ABOVE INCLUDES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.
- 11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.
- 12. THE MATTER IS REFERRED TO THE REGISTRAR.

DEC!SION OF: BOARD MEMBER D. McDERMOTT. (MARCH 3, 1966).

CONCURRING WITH THE DECISION OF MY COLLEAGUES.

However, I wish to state that I am far from satisfied with the evasive testimony and overall demeanour of the applicant's witness Campbell. In My opinion a pall of doubt pervades this matter throughout.

 $\frac{11386-65-R}{(\text{Local }101)}$  (Respondent) and PAWSON'S (SUDBURY) LIMITED (Intervener).

- AND

- 11387-65-R: REGINALD GILCHRIST (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11388-65-R: Martti Parviainen (Applicant) v. Sudbury General Workers Union (Local 101) (Respondent) and PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- AND 
  11389-65-R: ROBERT A. DENNIE (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).

   AND -
- 11390-65-R: Walter Sanwald (Applicant) v. Sudbury General Workers Union (Local 101) (Respondent) and PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11391-65-R: PETER SMIJAN (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11392-65-R: JOHN P. KAYES (APPLICANT) V. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- 11393-65-R: ADELARD BILADEAU (APPLICANT) v. SUDBURY GENERAL WORKERS UNION (LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- AND 
  11394-65-R: MARCEL CLOUTHIER (APPLICANT) V. SUDBURY GENERAL WORKERS UNION
  (LOCAL 101) (RESPONDENT) AND PAWSON'S (SUDBURY) LIMITED (INTERVENER).
- BEFORE: J. D. O'Shea, Deputy Vice-Chairman, and Board Members E. Boyer and

APPEARANCES AT THE HEARING: ROBERT A. DENNIE AND HARRY VOGT FOR THE APPLICANTS, ARTHUR KUBE FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER. (MARCH 11, 1966).

- 1. THE APPLICANTS HAVE APPLIED ON FEBRUARY 9TH, 1966, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF PAWSON'S (SUDBURY) LIMITED, AT SUDBURY, REPRESENTED BY THE RESPONDENT.
- 2. THE RESPONDENT AND PAWSON'S (SUDBURY) LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS EFFECTIVE FROM OCTOBER 28th, 1963, UP TO AND INCLUDING OCTOBER 28th, 1964. FOLLOWING NOTICE TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT THE RESPONDENT AND PAWSON'S (SUDBURY) LIMITED ENTERED INTO A "MEMORANDUM

OF SETTLEMENT" SIGNED ON BEHALF OF THE COMPANY AND THE UNION. THE LAST PARAGRAPH IN THIS MEMORANDUM OF SETTLEMENT READS AS FOLLOWS:

"THE UNDERSIGNED PARTIES RECOMMEND TO THEIR SUPERIORS OR MEMBERS THIS FOR A SETTLEMENT."

- 3. IT WOULD ACCORDINGLY APPEAR THAT IT WAS THE INTENTION OF THE PARTIES THAT SOMETHING FURTHER BE DONE AND THAT IF THE MINUTES OF SETTLEMENT WERE SUBSEQUENTLY AGREED TO THEY WOULD BE INCORPORATED IN A COLLECTIVE AGREEMENT. HOWEVER, NO COLLECTIVE AGREEMENT WAS ENTERED INTO FOLLOWING THE SIGNING OF THE MEMORANDUM OF SETTLEMENT AND THERE IS NOTHING IN WRITING SIGNED BY EITHER PARTY WHICH WOULD INDICATE THAT THE TERMS OF THE MEMORANDUM OF SETTLEMENT WERE IN FACT AGREED TO.
- 4. THE BOARD ACCORDINGLY FINDS THAT THE "MEMORANDUM OF SETTLEMENT" IS NOT A COLLECTIVE AGREEMENT AND ACCORDINGLY THIS APPLICATION IS TIMELY.
- 5. THE DOCUMENTARY EVIDENCE SUBMITTED IN SUPPORT OF THIS APPLICATION CONSISTED OF NINE INDIVIDUAL APPLICATIONS FOR DECLARATION TERMINATING THE BARGAINING RIGHTS (FORM 18) EACH OF WHICH WERE SIGNED BY A PERSON WHO PURPORTED TO BE AN EMPLOYEE OF PAWSON'S (SUDBURY) LIMITED.
- 6. The applicants' witness, Mr. Harry Vogt, testified that the service manager of Pawson's (Sudbury) Limited (who was one of the signatories to the memorandum of settlement) had his secretary write a letter to the Board, which Mr. Vogt signed, wherein the Board was requested to forward copies of Form 18.
- 7. FOLLOWING RECEIPT OF FORM 18 THE SERVICE MANAGER CAUSED HIS SECRETARY TO COMPLETE THE INFORMATION REQUIRED BY FORM 18 AND TO INSERT THE NAME OF AN INDIVIDUAL EMPLOYEE ON EACH COPY OF THE FORMS. MR. VOGT'S CONSULTATION WITH THE SERVICE MANAGER WITH RESPECT TO THE ORIGINATION OF THESE DOCUMENTS AND HIS ASSISTANCE IN THEIR PREPARATION WAS KNOWN TO ALL OF THE EMPLOYEES.
- 8. Mr. Vogt stated that this arrangement was made with the service manager to save money.
- 9. After the documents were signed the service manager caused his secretary to type the envelope in which the applications were mailed to the Board.
- 10. WHILE MR. VOGT TESTIFIED THAT THE EMPLOYEES HAD DECIDED TO MAKE THE APPLICATION PRIOR TO ANY DISCUSSIONS WITH THE SERVICE MANAGER, WE FIND THAT BECAUSE THE SERVICE MANAGER PARTICIPATED IN THE ORIGINATION AND PREPARATION OF THE DOCUMENTS SIGNED BY THE EMPLOYEES, AND THIS FACT WAS KNOWN TO THE EMPLOYEES, THE DOCUMENTARY EVIDENCE FILED IN SUPPORT OF THIS APPLICATION IS NOT RELIABLE EVIDENCE FROM WHICH WE CAN FIND THAT THE EMPLOYEES OF PAWSON'S (SUBBURY) LIMITED IN THE BARGAINING UNIT, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.
- 11. THIS APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF: BOARD MEMBER H. F. IRWIN. (MARCH 11, 1966).

HARRY VOGT, AN EMPLOYEE IN THE BARGAINING UNIT, TESTIFIED UNDER OATH THAT THE DECISION TO SEEK THE TERMINATION OF THE RESPONDENT UNION'S BARGAINING RIGHTS ORIGINATED WITH AND WAS MADE BY THE EMPLOYEES IN THE BARGAINING UNIT PRIOR TO ANY CONVERSATION WITH THE SERVICE MANAGER IN RESPECT THEREOF. HE STATED THAT THE EMPLOYEES WERE NOT SATISFIED WITH THE UNION'S PERFORMANCE AS THEIR BARGAINING AGENT. ANY ASSISTANCE GIVEN BY THE SERVICE MANAGER WAS MERELY IN RESPECT OF SECURING AND FILLING OUT THE APPLICATION FORMS REQUIRED BY THE BOARD AND WAS DONE AT THE REQUEST OF THE EMPLOYEES AFTER THEIR DECISION WAS MADE.

I AM SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION. NO EMPLOYEE HAS WRITTEN TO THE BOARD OPPOSING THE APPLICATION. ACCORDINGLY, I WOULD HAVE DIRECTED THE REPRESENTATION VOTE AS REQUIRED UNDER THE PROVISIONS OF SECTION 43 (3) OF THE LABOUR RELATIONS ACT TO CONFIRM THEIR EXPRESSED DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

11397-65-R: HARRY MOTT (APPLICANT) V. THE UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION CLC (RESPONDENT). (RE: FLETCHER TILE LIMITED)

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: (MARCH 1, 1966).

- 1. THE BOARD REVOKES ITS DECISION OF FEBRUARY 11th, 1966, AND SUBSTITUTES THE FOLLOWING THEREFOR.
- 2. THE APPLICANT HAS APPLIED, ON FEBRUARY 9TH, 1966, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF FLETCHER BRICK AND TILE LIMITED REPRESENTED BY THE RESPONDENT.
- 3. It would appear that the respondent was certified as bargaining agent for certain employees of Fletcher Brick and Tile Limited on July 27th, 1964 but has not entered into a collective agreement with Fletcher Brick and Tile Limited.
- 4. It would also appear that a conciliation officer was appointed by the Minister to assist the respondent and Fletcher Brick and Tile Limited on November 17th, 1964.
- 5. IT WOULD FURTHER APPEAR THAT THE CONCILIATION OFFICER IS STILL SEIZED WITH THE MATTER PURSUANT TO HIS APPOINTMENT BY THE MINISTER AND THAT A CONCILIATION BOARD HAS NOT BEEN APPOINTED AND ACCORDINGLY 30 DAYS HAVE NOT ELAPSED FOLLOWING THE RELEASE OF THE REPORT OF THE CONCILIATION BOARD BY THE MINISTER OR IN THE ALTERNATIVE THAT 30 DAYS HAVE NOT ELAPSED FOLLOWING THE ADVICE BY THE MINISTER TO THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD.
- 6. Section 46 (1) of The Labour Relations Act reads as follows:
  - "46. (1) WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND NOTICE

HAS BEEN GIVEN UNDER SECTION 11 AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE,

- (A) UNLESS A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES: OR
- (B) UNLESS THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER
  HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT
  ADVISABLE TO APPOINT A CONCILIATION BOARD."
- 7. It appears to the Board, therefore, from the facts set out above, that neither of the 30 day time periods referred to above have elapsed prior to the date of the making of this application.
- 8. If the Board is correct in its assumption that the above are the facts of this case, it would follow pursuant to the provisions of section 46 (1) of the Act that this application is untimely.
- 9. The Board accordingly directs the applicant to advise the Board, in writing, on or before the 8th day of March, 1966, whether, in his opinion, the Board is in error in assuming that the facts of this case are as set out above. If the applicant is of opinion that the Board is in error he will include in his advice to the Board a summary of the facts in support of his opinion.
- 10. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.
- 11. If the Board does not receive such advice supported by a summary of facts as herein directed, this application will be disposed of pursuant to the provisions of section 45 of the Board's Rules of Procedure without further notice to the applicant.

11451-65-R: MOYER SAND (1965) LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT).

BEFORE: J. H. Brown, Deputy Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: J. B. Allen for the applicant, L. Ingle, G. Marshall and E. Haggarty for the respondent.

DECISION OF THE BOARD: (MARCH 21, 1966).

1. THE NAME "UNITED STEEL WORKERS OF AMERICA" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "UNITED

STEELWORKERS OF AMERICA".

- 2. THE APPLICANT EMPLOYER IS APPLYING PURSUANT TO SECTION 45 (2) OF THE ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT TRADE UNION.
- 3. The respondent was certified by a certificate of the Board dated November 10th, 1965 as bargaining agent for a unit of employees of the applicant. By registered letter dated December 23rd, 1965 the respondent gave notice to the applicant of its desire to bargain with a view to making a collective agreement. From that date until the making of the instant application on February 24th, 1966 the applicant received no further communication from the respondent.
- 4. George Marshall, a representative of the respondent, testified that he had not attempted to communicate with the applicant during January of 1966 because he had been informed that Graydon Moyer, the applicant's manager at Ridgeville, was going to be absent on vacation until the end of the month. Marshall stated that another reason for delay in attempting to commence negotiations with the applicant was that he was only able to get the employees together on January 15th to draw up the union's proposals. Marshall further testified that some time during the first week in February and again on February 14th or 15th he telephoned Moyer at the applicant's Ridgeville office but on both occasions was informed that Moyer was out of the office. On neither occasion did Marshall Leave his name or request that Moyer return his call.
- IT IS CLEAR THAT THE BASIC PREREQUISITES FOR THE MAKING OF A DECLARATION BY THE BOARD UNDER SECTION 45 (2) HAVE BEEN MET IN THAT THE RESPONDENT FAILED TO COMMENCE BARGAINING WITHIN SIXTY DAYS FROM THE GIVING OF NOTICE. THE MAKING OF A DECLARATION TERMINATING BARGAINING RIGHTS. HOWEVER, LIES IN THE DISCRETION OF THE BOARD AND BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF MAKING A DECLARATION IT MUST BE SATISFIED THAT THE TRADE UNION CONCERNED HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THE EMPLOYEES IT REPRESENTS (SEE WALMER TRANSPORT COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-1954, 917,062; C.L.S. 76-404; OLIVER LUMBER COMPANY Case, O.L.R.B. Monthly Report, April 1963, page 280; Stark Truck Service (London) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1964, PAGE 150). THE BOARD, THEREFORE, AFFORDS TO THE TRADE UNION OR ANY OTHER INTERESTED PARTY AN OPPORTUNITY TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS. WHERE THE EXPLANATION IS SATISFACTORY THE BOARD IN THE EXERCISE OF ITS DISCRETION WILL DECLINE TO ISSUE A DECLARATION. IF, HOWEVER, AS A RESULT OF THE CONDUCT OF THE TRADE UNION A REASONABLE DOUBT EXISTS AS TO THE WISHES OF THE EMPLOYEES, THE BOARD WILL TEST THEIR DESIRES BY DIRECTING THE TAKING OF A REPRESENTATION VOTE (SEE DOMINION STORES LIMITED CASE, (1956) CCH CANADIAN LABOUR LAW REPORTS, 916,047, C.L.S. 76-529).
- 6. WITH REFERENCE TO THE INSTANT CASE, WE HAVE SOME DIFFICULTY IN ACCEPTING MARSHALL'S EXPLANATIONS FOR THE TARDINESS OF THE RESPONDENT IN PURSUING NEGOTIATIONS WITH THE APPLICANT FOLLOWING THE GIVING OF NOTICE. WHILE MOYER'S EVIDENCE IS THAT HE WAS ABSENT ON VACATION FROM SHORTLY BEFORE CHRISTMAS UNTIL JANUARY 24TH, DENNIS EVANS, THE PRESIDENT OF THE APPLICANT, TESTIFIED THAT HE WAS WORKING OUT OF THE COMPANY'S ST. CATHARINES OFFICE DURING ALL OF THIS PERIOD AND

WAS IN THE RIDGEVILLE OFFICE A PART OF THREE DAYS IN EACH WEEK. WE FAIL TO UNDERSTAND WHY MARSHALL, IN THE ABSENCE OF MOYER, DID NOT COMMUNICATE WITH EVANS PARTICULARLY SINCE MARSHALL ADMITS THAT HE EXPECTED THAT EVANS WOULD PARTICIPATE IN NEGOTIATIONS WITH THE UNION. IN FACT, SINCE EVANS IS PRESIDENT OF THE COMPANY AND MOYER'S SUPERIOR IT WOULD SEEM LOGICAL FOR MARSHALL TO COMMUNICATE WITH EVANS RATHER THAN MOYER IN THE FIRST INSTANCE.

- 7. WHILE MARSHALL TESTIFIED THAT THE APPLICANT HAD DIFFICULTIES IN GETTING THE MEMBERSHIP TOGETHER TO FORMULATE THE UNION'S PRPOSALS, NO EXPLANATION WAS GIVEN AS TO THE NATURE OF THESE DIFFICULTIES OR WHY A MEETING WITH THE EMPLOYEES COULD NOT HAVE TAKEN PLACE PRIOR TO JANUARY 15TH. IN THIS CONNECTION, WE ARE MINDFUL OF MARSHALL'S EVIDENCE THAT SOME DISCUSSIONS REGARDING THE UNION'S DEMANDS HAD ALREADY TAKEN PLACE WITH THE EMPLOYEES PRIOR TO CERTIFICATION. BE THAT AS IT MAY. EVEN AFTER THE UNION HAD DRAFTED ITS PROPOSALS ON JANUARY 15TH A PERIOD OF SOME FORTY DAYS ELAPSED PRIOR TO THE MAKING OF THE INSTANT APPLICATION DURING WHICH TIME IT CAN HARDLY BE SAID THAT MARSHALL ACTIVELY SOUGHT TO NEGOTIATE A COLLECTIVE AGREEMENT WITH THE COMPANY. WE WOULD MENTION THAT THERE IS NO EVIDENCE TO INDICATE THAT THE RESPONDENT WAS INTENTIONALLY DELAYING THE COMMENCEMENT OF NEGOTIATIONS AS A MATTER OF STRATEGY IN THE HOPE OF BEING ABLE TO NEGOTIATE A MORE ADVANTAGEOUS COLLECTIVE AGREEMENT AT A LATER DATE (SEE HOLLEY ELECTRIC LTD. CASE, O.L.R.B. MONTHLY REPORTS. May 1965, PAGE 136). WE WOULD ALSO POINT OUT THAT WHILE THE APPLICANT MADE NO EFFORT TO INITIATE NEGOTIATIONS, THERE IS NO EVIDENCE TO SUGGEST AN UNWILLINGNESS ON ITS PART TO BARGAIN WITH THE RESPONDENT.
- 8. WITH RESPECT TO THE EMPLOYEES THEMSELVES. THERE IS NO EVIDENCE AS TO HOW MANY WERE IN THE BARGAINING UNIT DURING THE PERIOD BETWEEN THE GIVING OF NOTICE AND THE MAKING OF THIS APPLICATION AND THERE IS NO DIRECT EVIDENCE TO INDICATE WHETHER OR NOT THE EMPLOYEES STILL WISH THE RESPONDENT TO CONTINUE TO REPRESENT THEM. NONE OF THE EMPLOYEES, HOWEVER, HAS FILED A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THIS APPLICATION ALTHOUGH THEY WERE AFFORDED AN OPPORTUNITY TO DO SO. ON THE OTHER HAND, THE APPLICANT HAS NOT DEMONSTRATED THAT IT HAS BEEN PREJUDICED BY THE TARDINESS OF THE RESPONDENT IN PURSUING NEGOTIATIONS, I.E., THERE IS NO EVIDENCE THAT THE COMPANY IS SEEKING A DECLARATION SO THAT IT WILL BE IN A POSITION TO ALTER WAGE RATES OR OTHER WORKING CONDITIONS (SEE WALMER TRANSPORT CO. LTD. CASE, SUPRA). MOREOVER, ONLY SIXTY-THREE DAYS ELAPSED BETWEEN THE GIVING OF NOTICE AND THE FILING OF THIS APPLICATION. IT IS RELEVANT TO NOTE, HOWEVER, THAT 3 1/2 MONTHS ELAPSED BETWEEN THE DATE ON WHICH THE RESPONDENT WAS CERTIFIED AND THE DATE OF THE FILING OF THIS APPLICATION. DESPITE THESE LATTER CONSIDERATIONS, THE LACK OF DILIGENCE DISPLAYED BY THE RESPONDENT IN CARRYING OUT ITS OBLIGATIONS AS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE APPLICANT GIVES RISE TO A REASONABLE DOUBT AS TO WHETHER THE RESPONDENT STILL COMMANDS THE SUPPORT OF THE EMPLOYEES. ACCORDINGLY, IN ALL THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE TAKEN TO ASCERTAIN THE WISHES OF THE EMPLOYEES.
- 9. THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF NOVEMBER 10TH, 1965 BEING ALL EMPLOYEES OF THE APPLICANT AT RIDGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.
- 10. ALL EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR

CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

- 11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.
- 12. THE MATTER IS REFERRED TO THE REGISTRAR.

#### INDEXED ENDORSEMENTS - SECTION 65

10948-65-U: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. EASTWOOD PARK HOTEL AND ROBERT LAURENT (RESPONDENTS).

AND -

11000-65-U: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union, A.F.L.-C.I.O.-C.L.C. (Complainant) v. EASTWOOD PARK HOTEL AND ROBERT LAURENT (RESPONDENTS).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. McDermott and F. W. Murray.

APPEARANCES AT THE HEARING: IAN G. SCOTT, FRANK CORTESE AND TERRY MEAGHER FOR THE COMPLAINANT, AND D. J. D. SIMMS FOR THE RESPONDENTS.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: (March 3, 1966).

- 1. This is an application for relief under section 65 of The Labour Relations Act.
- 2. At the hearing of this matter the complaint with respect to Akis Laskaris was not proceeded with and is accordingly dismissed.
- 3. ON THE BASIS OF ALL THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT THEODORE BIBIS, JOHN PETRAKIS, PETER PERIDIS AND PETER LEONARDOU WERE DISCHARGED BY THE RESPONDENTS FOR UNION ACTIVITY CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT. WHILE IT WOULD APPEAR THAT THE RESPONDENT ROBERT LAURENT WAS OPPOSED TO THE UNIONIZATION OF HIS EMPLOYEES, WE CANNOT, ON THE BALANCE OF PROBABILITIES APPEARING ON THE EVIDENCE BEFORE US, CONCLUDE THAT THIS WAS THE REASON FOR THE DISCHARGE OF THESE PERSONS. THE COMPLAINTS WITH RESPECT TO THEM ARE ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER D. McDERMOTT: (MARCH 3, 1966).

I BEG TO DIFFER WITH THE VIEWS OF MY COLLEAGUES IN THIS MATTER. IN CASES OF THIS KIND THERE IS RARELY DIRECT EVIDENCE AS TO THE REAL CAUSE OF DISMISSAL, THE REAL MOTIVE AND REASON BEING BEST KNOWN TO THE PERSON OR PERSONS EFFECTING THE DISCHARGE.

IN THIS PARTICULAR INSTANCE! SEEK TO UNEARTH THE REAL MOTIVE IN DISMISSING THE COMPLAINANTS RATHER THAN THE LEGAL JUSTIFICATION FOR SAME. IN THE ABSENCE OF

DIRECT EVIDENCE AS REFERRED TO IN THE FOREGOING, ONE MUST REACH A CONCLUSION BASED ON A CAREFUL REVIEW OF THE INDIRECT AND CIRCUMSTANTIAL EVIDENCE, AND AN EQUALLY CAREFUL ASSESSMENT OF THE DEMEANOUR AND CREDIBILITY OF THE VARIOUS WITNESSES. HAVING DONE SO, I BASE MY VERDICT ON WHAT I CHOOSE TO CALL "A PREPONDERANCE OF PROBABILITIES".

A CLEAR PATTERN OF OPEN AGGRESSIVE HOSTILITY TOWARD THE "GREEK UNION" EMERGES. THIS HOSTILITY IS MANIFEST IN THE ATTITUDE AND BEHAVIOUR OF ROBERT LAURENT, THE PROPRIETOR OF THE HOTEL. IT IS APPARENT THAT THERE WAS A CALCULATED ENDEAVOUR ON THE PART OF LAURENT TO WEAKEN OR DESTROY THE GREEKS BY SYSTEMATIC-ALLY TABULATING A SERIES OF HUMAN ERRORS AND MINOR MISDEMEANOURS IN ORDER TO SUBSTANTIATE CAUSE FOR DISMISSAL. WITH THE POSSIBLE EXCEPTION OF THE COMPLAINANT, THEODORE BIBIS, THERE IS NO EVIDENCE OF LAURENT INSTITUTING ANY FORM OF CORRECTIVE DISCIPLINE; INDEED, THE EVIDENCE SHOWS THAT THE MISDEMEANOURS OF OTHER EMPLOYEES WERE OVERLOOKED. ANY EMPLOYER BAITING A TRAP IN ORDER TO BUILD A CAUSE FOR DISMISSAL WOULD PROBABLY BE SUCCESSFUL, EVEN UNDER NORMAL CIRCUMSTANCES. BUT THIS IS NO MORE JUSTIFIABLE THAN A POLICEMAN SCATTERING DOLLAR BILLS ON A PUBLIC SIDEWALK IN ORDER TO ARREST A PEDESTRIAN PICKING THEM UP.

However, the essential ingredient for an applicant to succeed in a "section 65" case such as this is the motive of dismissal for union activity. In my opinion that motive is manifest throughout the entire case. It is clear that the union was regarded as a sort of ethnic entity, most of its members being of Greek origin. Isn't it an amazing coincidence, therefore, to find that all of the complainants in the instant case are Greeks?

IT IS ARGUED BY COUNSEL FOR THE RESPONDENTS THAT THERE ARE STILL MANY GREEKS LEFT AS EMPLOYEES AT THE HOTEL. | ATTACH LITTLE SIGNIFICANCE TO THIS. IT ISN'T NECESSARY TO ANNIHILATE AN ENTIRE ARMY IN ORDER TO SCORE A VICTORY.

ROBERT LARENT'S AGGRESSIVE HOSTILITY TOWARD THE UNION, AND THE GREEK EMPLOYEES IN PARTICULAR, WAS CLEARLY EVIDENT THROUGHOUT THE HEARINGS FOR ALL TO SEE. INDEED, ON AT LEAST ONE OCCASION THIS BOARD SAW FIT TO ADMONISH HIM FOR HIS BEHAVIOUR; AND ON OTHER OCCASIONS IT WAS NECESSARY FOR HIS OWN COUNSEL TO RESTRAIN HIM. IN THIS CONNECTION ONE MUST GIVE WEIGHTY CONSIDERATION TO THE EVIDENCE OF THE COMPLAINANTS REGARDING THE STATEMENTS OF LAURENT AT CERTAIN AFTER-HOUR MEETINGS OF EMPLOYEES. IT IS TO BE NOTED THAT THE COMPLAINANTS WERE EXCLUDED FROM THE HEARINGS, AND THEREFORE DID NOT HEAR EACH OTHER'S TESTIMONY; YET ALL OF THEIR EVIDENCE REGARDING LAURENT'S STATEMENTS AND BEHAVIOUR AT THOSE MEETINGS WAS CONSISTENT. AS OPPOSED TO THIS, WE HAVE THE TESTIMONY OF THE RESPONDENTS' WITNESS, VAN HORNE, WHO DENIED THE STATEMENTS MADE BY THE COMPLAINANTS. I CHOOSE NOT TO BELIEVE VAN HORNE WHOSE BIAS WAS QUITE EVIDENT.

The period in which the dismissals took place; the manner in which they were effected; the alleged cause for dismissal in each instance; the atmosphere of open aggressive hostility which prevailed; leads me to the firm conclusion that Laurent struck a blow of retaliation, and as a result the complainants dismissals were in fact a violation of the Labour Relations Act. I would therefore have ordered their immediate reinstatement with appropriate redress.

10968-65-U: RAY MACADAM (COMPLAINANT) V. CANADIAN DREDGE & DOCK CO. LIMITED, THE J. P. PORTER COMPANY LIMITED (A JOINT VENTURE) (RESPONDENT).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

APPEARANCES AT THE HEARING: Ray MacAdam for the complainant, and Joseph Kotlarchuk for the respondent.

DECISION OF J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: (March 16, 1966).

- 1. Further to the Board's decision in this matter, dated December 7th, 1965, the complainant requested the Board to determine the amount of compensation payable to him, and a hearing was held to hear the representations of parties in this respect on March 9th, 1966.
- AT THE TIME OF HIS DISCHARGE ON SEPTEMBER 23RD, 1965, THE COMPLAINANT WAS EARNING THE BASIC WAGE OF \$10.98 PER DAY. HAD HE NOT BEEN DISCHARGED, BUT RETAINED IN HIS EMPLOYMENT. HE WOULD HAVE BEEN LAID OFF ON NOVEMBER 26TH, 1965, AND WOULD NOT BE RECALLED TO WORK UNTIL SOME TIME IN THE SPRING OF 1966. IT IS AGREED THAT HIS BASIC EARNINGS FOR THE PERIOD FROM THE DATE OF HIS DISCHARGE UNTIL November 26th, 1965, would have been \$702.72. It is further agreed that the AMOUNT OF VACATION PAY TO WHICH HE WOULD HAVE BEEN ENTITLED WITH RESPECT TO THAT PERIOD IS \$41.60. THE PERSON WHO REPLACED THE COMPLAINANT ON HIS JOB WORKED A TOTAL OF SIXTY HOURS OVERTIME, AND, HAVING REGARD TO THE CIRCUMSTANCES, IT IS REASONABLE TO CONCLUDE THAT THE COMPLAINANT WOULD LIKEWISE HAVE WORKED THIS AMOUNT OF OVERTIME. IT IS AGREED THAT THE SUM PAYABLE IN THIS RESPECT WOULD BE \$116.40. THE COLLECTIVE AGREEMENT PROVIDES FOR THE PAYMENT OF A "SUBSISTENCE AND QUARTERS ALLOWANCE" OF \$90.00 PER THIRTY-DAY MONTH. THIS AMOUNT IS PAYABLE WITHOUT REGARD TO WHETHER ANY EXPENSE IS ACTUALLY INCURRED, AND IN OUR VIEW IS AN AMOUNT TO WHICH THE COMPLAINANT IS ENTITLED. IT IS AGREED THAT THE AMOUNT PAYABLE IN THIS RESPECT WOULD BE \$192.00. IT IS OUR OPINION THAT THE COMPLAINANT WOULD BE ENTITLED TO COMPENSATION IN RESPECT OF ALL OF THE FOREOING AMOUNTS. THE COMPLAINANT DID MAKE PROMPT AND REASONABLE EFFORTS TO MITIGATE HIS LOSS OF EARNINGS AND RECEIVED INCOME FROM OTHER EMPLOYMENT, WHICH IT IS AGREED AMOUNTED TO \$375.00 FOR THE PERIOD IN QUESTION. THE NET AMOUNT OF COMPENSATION TO WHICH THE COMPLAINANT IS ENTITLED IS THEREFORE \$677.72. THIS DETERMINATION IS MADE WITH RESPECT TO THE LOSS OF EARNINGS SUFFERED BY THE COMPLAINANT FROM THE DATE OF HIS DISCHARGE UNTIL THE DATE OF THE SECOND HEARING IN THIS MATTER.
- 3. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:-

As compensation for the loss of wages and employment benefits from September 23rd, 1965, to and including March 9th, 1966, the respondent shall forthwith pay to Ray MacAdam the sum of \$677.72.

CONCURRING OPINION OF BOARD MEMBER D. McDERMOTT: (MARCH 16, 1966).

! CONCUR WITH THE DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT AS SET FORTH IN THE MAJORITY DECISION. | WOULD, HOWEVER, POINT OUT THAT THIS DETERMINATION IS MADE ONLY WITH RESPECT TO THE LOSSES SUFFERED BY THE COMPLAINANT UP UNTIL THE DATE OF THE SECOND HEARING IN THIS MATTER. IN MY VIEW, ALTHOUGH THE DECISION OF THE MAJORITY IS SILENT ON THIS POINT, THE BOARD'S DETERMINATION DOES NOT AFFECT WHATEVER CONTINUING RIGHTS THE COMPLAINANT MAY HAVE AS AN EMPLOYEE OF THE RESPONDENT.

### INDEXED ENDORSEMENT - SECTION 47A

11385-65-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. FINDLAY KEMP DAIRIES LIMITED; SILVERWOOD DAIRIES LIMITED, AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC: AND ITS LOCAL 440 (RETAIL, WHOLESALE AND DAIRY WORKERS UNION) (RESPONDENTS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, S. POWERS, S. MILLAR AND G. HARRISON FOR THE APPLICANT, JOHN P. SANDERSON, JOHN HOUSTON AND E. FINDLAY FOR THE RESPONDENT COMPANIES, H. BUCHANAN AND G. REEKIE FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: (MARCH 8, 1966).

- 1. This is an application for relief under section 47a of The Labour Relations Act.
- 2. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.
- 3. Having regard to the agreed facts and the representations of the parties, the Board finds that the respondent, Findlay Kemp Dairies Limited sold, within the meaning of section 47a (1) to Silverwood Dairies Limited, the Business formerly carried on by Findlay Kemp Dairies Limited at Metropolitan Toronto. Subsequently the respondent, Silverwood Dairies Limited intermingled, within the meaning of section 47a (5), the employees of Findlay Kemp Dairies Limited who were represented by the applicant, with the employees of Silverwood Dairies Limited who were represented by Retail, Wholesale and Department Store Union, AFL: C10:CLC and its Local 440 (Retail, Wholesale and Dairy Workers Union).
- 4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE INTERMINGLED EMPLOYEES, IN THE CIRCUMSTANCES OF THIS CASE, CONSTITUTE ONE APPROPRIATE BARGAINING UNIT.
- 5. Having regard to the agreement of the parties the Board accordingly finds that all employees of the respondent employed at and working out of Metropolitan Toronto, save and except plant protection employees, office staff, farm inspector, chief engineer, engineer-in-charge at Branches, foremen, milk route foremen, those above the rank of foreman and milk route foreman, territory slaesmen, persons hired for part-time working 24 hours or less per week and employees hired for relief or seasonal work, provided however that any such employee employed continuously for a period of more than three months shall be included in the

BARGAINING UNIT AND EMPLOYEES HIRED FOR VACATION PERIOD, PROVIDED HOWEVER THAT ANY SUCH EMPLOYEE WHOSE PERIOD OF EMPLOYMENT CONTINUES AFTER OCTOBER 1ST IN ANY YEAR SHALL BE INCLUDED IN THE BARGAINING UNIT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

- 6. PURSUANT TO THE PROVISIONS OF SECTION 47a (7) AND FOR THE PURPOSES OF DETERMINING WHICH TRADE UNION SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
- 7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC: AND ITS LOCAL 440 (RETAIL, WHOLESALE AND DAIRY WORKERS UNION).
- 8. THE MATTER IS REFERRED TO THE REGISTRAR.

## REFERENCE TO BOARD PURSUANT TO SECTION 79 A OF THE ACT DISPOSED OF DURING MARCH

11338-65-M: BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, (AFFILIATED WITH BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION A.F. OF L. C.I.O. C.L.C.)
(TRADE UNION), V. THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR (EMPLOYER).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. MCDERMOTT.

APPEARANCES AT THE HEARING: Martin Levinson and J. Borg for the trade union, Kenneth Quellette for the employer, and H. Buchanan for Retail, Wholesale and Department Store Union Local 519.

DECISION OF THE BOARD: (MARCH 14, 1966).

- 1. This is a reference to the Board by the Minister of Labour, pursuant to section 79a of The Labour Relations Act, of the Question whether the trade union is entitled to give notice to bargain to the employer pursuant to section 47a of the Act or pursuant to any other provisions of The Labour Relations Act.
- 2. The trade union, Building Service Employees Union, Local 210, (which will be referred to hereafter as "Building Service") represented a unit of employees of The Board of Trustees of the Roman Catholic Separate Schools in the Town of Riverside and a unit of employees of The Board of Combined Roman Catholic Separate Schools of Sandwich West, and there were collective agreements made between Building Service and the above school boards. By order of The Ontario Municipal Board, dated August 5th, 1965, and declared to come into force on January 1st, 1966, the Town of Riverside and a portion of the Township of Sandwich West, together with certain other municipalities and portions of municipalities were

ANNEXED TO THE CITY OF WINDSOR. IT APPEARS, HOWEVER, THAT THE DIRECTION WITH RESPECT TO TRANSFER OF PROPERTIES CONTAINED IN THIS ORDER WAS NOT BINDING UPON THE ROMAN CATHOLIC SEPARATE SCHOOL BOARDS OF RIVERSIDE OR OF SANDWICH WEST. COUNSEL ADVISED THE BOARD THAT THE MATTER OF TRANSFER OF PROPERTY AND OF THE OPERATIONS OF THOSE BOARDS IS THE SUBJECT OF A PRIVATE BILL, WHICH, ON THE DATE OF THE HEARING OF THIS MATTER, HAD BEEN GIVEN FIRST READING BY THE LEGISLATURE. IT IS CLEAR, HOWEVER, THAT THERE HAS BEEN A DE FACTO TRANSFER OF AUTHORITY, OPERATIONS AND PROPERTIES FROM THE RIVERSIDE AND SANDWICH SEPARATE SCHOOL BOARDS. WHICH ARE NO LONGER ACTIVE, TO THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR. THE WINDSOR BOARD HAS HIRED THE FORMER EMPLOYEES OF THE RIVERSIDE AND SANDWICH BOARDS WHO WERE IN THE BARGAINING UNITS REPRESENTED BY BUILDING SERVICE. THE EMPLOYEES OF THE WINDSOR BOARD, HOWEVER, ARE ALREADY REPRESENTED, FOR PURPOSES OF COLLECTIVE BARGAINING, BY THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 519, (REFERRED TO HEREAFTER AS "RETAIL WHOLESALE"), WHICH TRADE UNION WAS NOTIFIED OF THESE PROCEEDINGS, AND ATTENDED AT AND PARTICIPATED IN THE HEARING OF THIS MATTER.

- 3. Counsel for Building Service contends that on the above facts the provisions of section 47a of the Act apply and that by virtue of those provisions Building Service is entitled to bargain with the Windsor Board with respect to employees in a bargaining unit "like" those which it represented among the employees of the Riverside and Sandwich Boards. The employer and Retail Wholesale resist the claim of Building Service urging that there has not, on the facts stated, been a "sale of a business" within the meaning of section 47a of the Act.
- 4. SECTION 47A OF THE ACT PROVIDES IN PART AS FOLLOWS:
  - 47A (1) IN THIS SECTION,
    - (A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;
    - (B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY
      OTHER MANNER OF DISPOSITION, AND "SOLD" AND
      "SALE" HAVING CORRESPONDING MEANINGS.
    - (2) WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11.

UNDERSTOOD FOR PRACTICAL PURPOSES ONLY WITH RELATION TO THE PARTICUAL CONTEXT IN WHICH IT IS USED. WHILE SOME WOULD HAVE IT THAT

THE WORD IN ITS ORDINARY AND COMMON USE IS EMPLOYED TO DESIGNATE HUMAN EFFORTS WHICH HAVE FOR THEIR END LIVING OR REWARD; IT IS NOT COMMONLY USED AS DESCRIPTIVE OF CHARITABLE RELIGIOUS, EDUCATIONAL, OR SOCIAL AGENCIES.

EASTERBROOK V. HEBREW LADIES' ORPHAN SOCIETY; 82 A 561, 563, REFERRED TO IN BALLENTINE, LAW DICTIONARY (1948), 179.

IT HAS ALSO BEEN HELD THAT

THE WORD "BUSINESS" MAY ALSO INCLUDE AN ACTIVITY WITHOUT CONTEMPLATION OF PECUNIARY PROFIT.

SAMSON V. M.N.R. [1943] Ex. C.R. 17.

AND IT IS EVIDENT THE MEANING OF THE TERM CANNOT BE DETERMINED BY A COMPETITION OF DICTIONARY DEFINITIONS OR OF QUOTATIONS FROM CASES IN WHICH THE TERM IS CONSTRUED IN OTHER CONTEXTS. IN THE INSTANT CASE, THE TERM "BUSINESS" SHOULD BE GIVEN THAT INTERPRETATION MOST CONSISTENT WITH THE OTHER PROVISIONS OF THE LABOUR RELATIONS ACT AND WHICH WILL BEST EFFECT THE PURPOSES OF THAT SECTION OF THE ACT IN WHICH THE TERM APPEARS. IT SHOULD BE BORNE IN MIND THAT THE ACT DOES NOT DISTINGUISH BETWEEN PUBLIC AND PRIVATE BUSINESS. AND CONTEMPLATES THE EXISTENCE OF BARGAINING RIGHTS HELD BY TRADE UNIONS WITH RESPECT TO "EMPLOYERS" GENERALLY AND NOT SIMPLY THOSE ENGAGED IN COMMERCIAL ENTERPRISES. NOTHING IN THE ACT WOULD SUGGEST THAT ANY LIMITATION ON THE CONTINUANCE OF THESE BARGAINING RIGHTS SHOULD BE IMPOSED BY VIRTUE OF THE NON-COMMERCIAL NATURE OF ANY EMPLOYER'S "BUSINESS". THE TERM "BUSINESS" AS IT APPEARS IN THE LABOUR RELATIONS ACT, THEREFORE, OUGHT NOT TO BE QUALIFIED BY THE ADDITION OF THE ADJECTIVE "COMMERCIAL", BUT SHOULD RATHER BE READ AS REFERRING GENERALLY TO THE UNDERTAKING OF ANY EMPLOYER WHOSE OPERATIONS ARE SUBJECT TO THIS ACT. IT IS CLEAR AND NOT QUESTIONED THAT THE OPERATIONS OF ALL OF THE SCHOOL BOARDS REFERRED TO HEREIN ARE SUBJECT, AT LEAST AS FAR AS THE BARGAINING UNITS HERE INVOLVED ARE CONCERNED, TO THE PROVISIONS OF THE ACT. SECTION 47a (2) PROVIDES FOR THE CONTINUATION OF BARGAINING RIGHTS WITH RESPECT TO A UNIT OF EMPLOYEES OF "AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION" AND BOTH THE RIVERSIDE AND SANDWICH BOARDS WERE SUCH EMPLOYERS. IN THE UNIVERSITY of Windsor Case, Board File-No. 6554-63-R, the Board applied the provisions of SECTION 47A IN A CASE INVOLVING A MERGER OF PREVIOUSLY INDEPENDENT UNIVERSITIES. A BROAD DEFINITION OF THE TERM "BUSINESS" IS IMPLICIT IN THAT HOLDING.

6. WHILE IT WAS NOT EXPRESSLY ARGUED THAT THE SCHOOL BOARDS! UNDERTAKINGS DID NOT CONSTITUTE A "BUSINESS" WITHIN THE MEANING OF THE ACT, COUNSEL FOR THE EMPLOYER DID URGE THAT (QUITE APART FROM THE INFORMALITY OF THE TRANSACTIONS WHICH HAVE TAKEN PLACE) THERE HAD BEEN NO "SALE" WITHIN THE MEANING OF THE ACT, SINCE THAT TERM REFERS TO CONSENSUAL TRANSACTIONS, WHILE IN THE INSTANT CASE THE TRANSACTIONS ARE ONES THE PARTIES WERE DIRECTED TO MAKE. THE WORD "SELLS", HOWEVER, HAS BEEN GIVEN A BROAD MEANING IN THE STATUTE, WHERE IT IS STATED TO INCLUDE "LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION". WHILE THE TRANSACTIONS WITH WHICH WE ARE CONCERNED THUS COME LITERLLY WITHIN THE PROVISIONS OF THE ACT, IT IS OUR VIEW THAT

IN ANY EVENT THE WORD "SELLS" SHOULD NOT BE RESTRICTED TO "COMMERCIAL" SALES, FOR THE REASONS GIVEN IN THE PRECEDING PARAGRAPH.

7. The Board is of opinion that on the facts stated the provisons of section 47a apply and that therefore Building Service continues to be the bargaining agent for the employees of the Windsor Board in the "Like bargaining unit" to those for which it was bargaining agent for the employees of the Riverside and Sandwich Boards. Thus, in the instant case, there are two "Like bargaining units", one of employees working at schools and grounds formerly within the jurisdiction of the Riverside Board, the other of employees at schools and grounds formerly within the jurisdiction of the Sandwich Board. It should be noted that in a situation of this sort it is the duty of the Board to determine the "Like bargaining unit" to that formerly represented by a trade union. If this were an application for certification, the Board, pursuant to section 6 of the Act, would be required to determine an "appropriate" bargaining unit. In the case of school boards, the Board has invariably found that all employees of the school board coming within certain classifications constituted an appropriate unit. However, as the Board pointed out in the Oshawa Wholesale Limited Case, Board File No. 9735-64-M,

THE PRACTICES OF THE BOARD IN CERTIFICATION APPLICATIONS WITH RESPECT TO THE APPROPRIATENESS OF BARGAINING UNITS, HOWEVER, MAY BE CIRCUMSCRIBED IN AN APPLICATION UNDER SECTION 47A, SINCE THE SECTION PROVIDES, EXCEPT IN SPECIAL CIRCUMSTANCES, THAT A TRADE UNION CONTINUES TO HOLD ITS BARGAINING RIGHTS IN THE LIKE BARGAINING UNIT. IN OTHER WORDS, IN APPLYING SECTION 47A, THE BOARD MUST CONSIDER NOT ONLY WHAT WOULD BE AN APPROPRIATE BARGAINING UNIT IN A CERTIFICATION PROCEEDING, BUT ALSO IT MUST TAKE INTO ACCOUNT, AND IN LARGE MEASURE BE GOVERNED BY, THE SCOPE OF THE BARGAINING UNIT ALREADY IN EXISTENCE.

IN THE INSTANT CASE, NOT ONLY HAS THERE BEEN NO INTERMINGLING OF EMPLOYEES, BUT THE BARGAINING UNITS CAN IN EACH CASE BE DESCRIBED WITH PRECISION BY REFERENCE TO GEOGRAPHIC LOCATION. IT IS OUR VIEW, THEREFORE, THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWN OF RIVERSIDE IN ITS CARETAKING AND MAINTENANCE STAFF, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PART-TIME EMPLOYEES WORKING LESS THAN 24 HOURS A WEEK, AND THAT BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 CONTINUES TO BE BARGAINING AGENT OF ALL EMPLOYEES OF THE EMPLOYER WITHIN THE FORMER MUNICIPAL BOUNDARIES OF THE TOWNSHIPS OF SANDWICH EAST AND SANDWICH WEST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PROBATIONARY EMPLOYEES AND PART-TIME EMPLOYEES WORKING LESS THAN 6 HOURS A DAY.

- 8. It should be noted that this case has come to the Board on a reference from the Minister, and not by way of application pursuant to section 47a of the Act. We have dealt, therefore, only with the question referred to the Board, and make no comment with respect to any other issues which might appear, or which might arise on an application under section 47a.
- 9. The answer to the Question referred to the Board by the Minister of Labour

IS: THE TRADE UNION IS ENTITLED TO GIVE NOTICE TO BARGAIN TO THE EMPLOYER PURSUANT TO SECTION 47A WITH RESPECT TO THE BARGAINING UNITS DESCRIBED IN PARAGRAPH 6 OF THIS ENDORSEMENT.

## INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION

10198-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. COLUMBIA METAL ROLLING MILLS LIMITED (RESPONDENT) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER #1) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 30 (INTERVENER #2).

- AND-

10200-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. WESTEEL PRODUCTS LIMITED (RESPONDENT) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 30 (INTERVENER #1) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER #2).

-AND -

10210-65-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. ROSCO METAL PRODUCTS LIMITED (RESPONDENT) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 233 (INTERVENER #1) AND SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 30 (INTERVENER #2).

BEFORE: J. F. W. WEATHERILL, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, R. WHITE AND BRUCE LEE FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENTS, AND R. KOSKIE, H. KOTLER, RON TAYLOR AND GEORGE CRUMP FOR THE INTERVENERS.

DECISION OF THE BOARD: (MARCH 29, 1966).

- 1. The intervener in this matter, sheet metal Workers International Association, Local Union No. 233, has requested that the Board reconsider its decision, dated December 10th, 1965, in which the Board ordered that a representation vote be taken among the employees of Rosco Metal Products Limited. The facts with respect to these matters have been fully set out in the Earlier endorsements, dated June 22nd and December 10th, 1965. In its request for reconsideration, the intervener alleged that the Board has erred in ordering the consolidation of the applications in these matters; that the Board had, by such order, made it impossible for it to dispose of each of the individual submissions on their own merits; and that the Board had failed to give effect to its own decision contained in the endorsement of the record, dated June 22nd, 1965, that, on certain assumed facts, the application by the applicant made with respect to employees of Rosco Metal Products Limited was untimely.
- 2. THE MATTER WAS LISTED FOR HEARING TO ENTERTAIN THE REPRESENTATIONS OF THE PARTIES CONCERNING THE INTERVENER'S REQUEST FOR RECONSIDERATION OF THESE MATTERS. AT THE HEARING, COUNSEL FOR THE APPLICANT AND FOR THE RESPONDENT MADE THE

OBJECTION THAT RECONSIDERATION OF THE BOARD'S DECISION IN THESE CIRCUMSTANCES
CONSTITUTED A DEPARTURE FROM THE BOARD'S POLICY WITH RESPECT TO RECONSIDERATION
OF ITS DECISIONS. IT WAS ARGUED THAT SINCE THE INTERVENER HAD NOT REFERRED TO
ANY NEW EVIDENCE NOT AVAILABLE TO THE PARTIES AT THE TIME OF THE EARLIER HEARING
NOR TO ARGUMENTS NOT OPEN TO THE PARTIES AT THAT TIME, THIS WAS NOT A PROPER CASE
FOR RECONSIDERATION.

- 3. The Board's jurisdiction to reconsider any of its decisions is contained in section 79 (1) of The Labour Relations Act.
  - 79.(1) THE BOARD HAS EXCLUSIVE JURISDICTION TO EXERCISE THE POWERS CONFERRED UPON IT BY OR UNDER THIS ACT AND TO DETERMINE ALL QUESTIONS OF FACT OR LAW THAT ARISE IN ANY MATTER BEFORE IT, AND THE ACTION OR DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES, BUT NEVERTHELESS THE BOARD MAY AT ANY TIME, IF IT CONSIDERS IT ADVISABLE TO DO SO, RECONSIDER ANY DECISION, ORDER, DIRECTION, DECLARATION OR RULING MADE BY IT AND VARY OR REVOKE ANY SUCH DECISION, ORDER, DIRECTION, DECLARATION OR RULING.

THE BOARD'S POLICY IN THIS RESPECT HAS BEEN SET OUT IN SEVERAL DECISIONS, INCLUDING THE INTERNATIONAL NICKEL COMPANY OF CANADA CASE, 63 C.L.L.C. 1176, AND THE HOLLAND RIVER GARDENS COMPANY CASE, 63 C.L.L.C. 1253. THIS POLICY, HOWEVER, DOES NOT PRECLUDE A PARTY IN/PROPER CASE, FROM MAKING REPRESENTATIONS AS TO THE PARTICULAR APPLICATION OF THE POLICY OR AS TO THE PROPRIETY OF ITS EXTENSION. IN MANY CASES SUCH REPRESENTATIONS MAY BE DEALT WITH ON THE BASIS OF WRITTEN SUBMISSIONS AND WITHOUT THE NECESSITY OF HOLDING A HEARING. IN THE INSTANT CASE, HAVING REGARD TO THE COMPLEXITY OF THE QUESTIONS INVOLVED, THE MATTER WAS LISTED FOR HEARING IN ORDER THAT ALL ARGUMENTS RELATING TO THESE MATTERS MIGHT BE FULLY CANVASSED. IN PARTICULAR, THE BOARD IS CONCERNED WITH THE ALLEGATION THAT THERE IS A CONTRADICTION BETWEEN THE BOARD'S ENDORSEMENT OF JUNE 22ND, 1965, AND THAT OF DECEMBER 10TH, 1965, APPEARING ON THE RECORD OF THESE MATTERS.

- 4. Having regard to the nature of the grounds adduced by the intervener as the basis for its request that the Board reconsider, it is apparent that the arguments on the question whether the Board should reconsider its decision are to a large degree identical with those on the question whether the decision should stand. For this reason the Board, overruling the objections of the applicant, afforded the intervener full opportunity to argue all questions arising in the matter. Following the arguments of counsel for the intervener, counsel for the applicant moved that the Board dismiss the request to reconsider. The Board reserved its ruling on this motion, and counsel for the applicant and for the respondent presented their arguments on all aspects, after which counsel for the intervener made his reply.
- 5. ON THE MOTION OF COUNSEL FOR THE APPLICANT THAT THE BOARD REFUSE TO RECONSIDER THESE MATTERS, IT IS OUR OPINION THAT THIS MOTION SHOULD BE DENIED. THIS RULING DOES NOT DETRACT FROM THE POLICY OF THE BOARD WITH RESPECT TO RECONSIDERATIONS ENUNCIATED IN THE CASES CITED ABOVE. INDEED, THE INTERVENER'S CASE COMES WITHIN THE SCOPE OF THE POLICY SINCE THE (ARGUABLY) APPARENT CONTRADICTION IN THE ENDORSEMENTS ON THE RECORD DOES RAISE AN ISSUE NOT BEFORE THE BOARD AT THE EARLIER HEARING. WE ARE OF OPINION, THEREFORE, THAT IN THESE CIRCUMSTANCES, THE BOARD'S DECISION OF DECEMBER 10TH, 1965, OUGHT TO BE RECONSIDERED. THE APPLICANT'S MOTION IS THEREFORE DENIED.

- 6. THE FIRST ISSUE RAISED BY THE INTERVENER INVOLVED THE ORDER OF THE BOARD. MADE AT THE SECOND HEARING IN THIS MATTER, HELD ON AUGUST 18TH, 1965, CONSOLIDAT-ING THESE APPLICATIONS. COUNSEL FOR THE INTERVENER ARGUED THAT THESE WERE NOT MATTERS WHICH, ACCORDING TO THE PRACTICE OF THE COURTS, SHOULD HAVE BEEN CONSOLIDATED. SINCE THEY INVOLVE NEITHER THE SAME PARTIES NOR THE SAME ISSUES. IT IS THE CASE, HOWEVER, THAT ESSENTIALLY THE SAME ISSUE IS CENTRAL TO ALL THE APPLICATIONS IN THIS MATTER, NAMELY, WHO IS ENTITLED TO BE BARGAINING AGENT FOR a certain group of employees. It should be borne in mind that, by section 75 (9) OF THE LABOUR RELATIONS ACT, "THE BOARD SHALL DETERMINE ITS OWN PRACTICE AND PROCEDURE", AND THE RULES OF THE BOARD WITH RESPECT TO CONSOLIDATION ARE VERY WIDE (SEE SECTION 57 OF THE BOARD'S RULES OF PROCEDURE). IN ANY EVENT, THE CASES HAD BEEN LISTED FOR HEARING TOGETHER, AND THE EVIDENCE IN EACH CASE WOULD HAVE BEEN TO A LARGE EXTENT, MATERIAL TO THE OTHERS. FINALLY, IT MAY BE NOTED THAT THE ORDER CONSOLIDATING THE APPLICATIONS WAS MADE ON AUGUST 18TH. 1965. AT THE BEGINNING OF THE HEARING, WHEREAS THE REQUEST FOR RECONSIDERATION WAS NOT MADE UNTIL JANUARY 10TH, 1966, ONE MONTH AFTER THE ENDORSEMENT OF DECEMBER 10TH HAD BEEN ISSUED. IN OUR VIEW, THE INTERVENER WAS NOT IN FACT PREJUDICED BY THE CONSOLIDATION ORDER, WHICH IT WAS WITHIN THE BOARD S JURISDICTION TO MAKE AND WHICH WAS IN OUR OPINION PROPERLY MADE IN THE CIRCUMSTANCES.
- THE INTERVENER NEXT ARGUED THAT THE BOARD HAD NOT GIVEN EFFECT TO ITS DECISION CONTAINED IN THE ENDORSEMENT OF JUNE 22ND. 1965. IN THIS MATTER. THAT ENDORSEMENT AFFECTED ONLY THE APPLICATION WITH RESPECT TO ROSCO METAL PRODUCTS LIMITED. IT WAS NOT MADE BY THE AGREEMENT OF THE PARTIES ON CERTAIN ASSUMED FACTS. FOLLOWING THE DECISION ON THESE ASSUMED FACTS, THE MATTER WAS LISTED FOR HEARING IN ORDER THAT EVIDENCE TENDING TO ESTABLISH THOSE FACTS MIGHT BE HEARD TOGETHER WITH ANY OTHER MATTERS RELEVANT TO THE APPLICATION. IT IS APPARENT FROM THIS THAT EVEN IF THE ASSUMED FACTS WERE ESTABLISHED, THE APPLICATION COULD STILL NOT BE CONSIDERED TO HAVE BEEN DISPOSED OF. THE DECISION OF JUNE 22ND THUS WAS NOT A DECISION WITH RESPECT TO THE MERITS OF THE APPLICATION ITSELF, BUT WAS RATHER IN THE NATURE OF AN ADVISORY OPINION. THE ENDORSEMENT DOES NOT SET OUT THAT THE ASSUMED FACTS WERE THE ONLY FACTS ON WHICH THE APPLICATION WAS TO BE DETERMINED - THEY WERE RATHER THE ASSUMED FACTS ON WHICH ONE ISSUE IN THE CASE WAS TO BE DEALT WITH. THE IMPORTANT DETERMINATION WHICH IS SET FORTH IN THAT ENDORSEMENT (WHICH WE ARE NOT ASKED TO RECONSIDER) IS SET FORTH IN PARAGRAPH 10 AND 11 THEREOF AS FOLLOWS:-

It is our finding, therefore, that once the intervener, Local 233, gave notice, as it is assumed to have done in the instant case, it was placed by virtue of section  $47\underline{a}(9)$  of the Act in the same position as if it had been certified under section 7 for the employees, in a like bargaining unit, of the successor employer.

ON THE BASIS OF THE ASSUMED FACTS, THEREFORE, WE ARE IMPELLED TO CONCLUDE THAT THIS APPLICATION IS UNTIMELY.

Following this "interlocutory" decision, the matter was listed for hearing "to hear evidence and argument concerning proof of all of the assumed facts (including evidence and argument on the merits as to whether or not a sale, within the meaning of section  $47\underline{a}$  to the respondent has in fact taken place as alleged and whether

NOTICE AS ALLEGED WAS IN FACT GIVEN) AND ON ALL OTHER REMAINING ISSUES." NO OBJECTION WAS TAKEN TO THIS PROCEEDING.

- 8. AT THE SECOND HEARING, WHILE THE FACTS ASSUMED FOR PRUPOSES OF THE INTER-LOCUTORY DECISION WERE LARGELY SUBSTANTIATED, THERE WERE OTHER FACTS ESTABLISHED WHICH THE APPLICANT WAS NOT, BY THE TERMS OF THE FIRST ENDORSEMENT, PRECLUDED FROM ESTABLISHING AND WHICH THE BOARD FELT WERE MATERIAL TO THE APPLICATIONS THEN BEFORE IT IN THE CONSOLIDATED MATTERS. IN THE RESULT, THE BOARD ORDERED THAT A REPRESENTATION VOTE BE HELD AMONG THE EMPLOYEES OF ROSCO METAL PRODUCTS LIMITED, IN WHICH BOTH THE APPLICANT AND THE INTERVENER WERE ENTITLED TO APPEAR ON THE BALLOT. BECAUSE THE BOARD HAD, IN ITS FIRST ENDORSEMENT, FOUND THE ROSCO APPLICATION TO BE UNTIMELY ON THE ASSUMED FACTS. BUT HAD LATER DIRECTED A VOTE IN WHICH THE APPLICANT S NAME WOULD APPEAR ON THE BALLOT, THE INTERVENER HAS ARGUED THAT THE BOARD'S DECISIONS ARE INCONSISTENT. THE SECOND ENDORSEMENT, HOWEVER, WAS MADE ON THE BASIS OF ALL OF THE FACTS ESTABLISHED, NOT SIMPLY THOSE ASSUMED AS THE BASIS FOR THE INTERLOCUTORY HOLDING. FURTHER - AND WHAT IS MOST IMPORTANT - THE BOARD, IN ITS DECISION OF DECEMBER 10TH, AFFIRMED ITS FINDING OF JUNE 22ND AND SET OUT THE BASIS FOR ITS DIRECTION OF A REPRESENTATION VOTE DISTINGUISHING BETWEEN ITS HOLDING ON THE ASSUMED FACTS WHICH IT CONFIRMED AND THE REASONS FOR ITS DIRECTION OF A VOTE. THE BASIS FOR THE DIRECTION WAS THAT IT WAS PROPER FOR THE BOARD TO CONSIDER THE NATURE OF THE INTERVENER'S CONTINUING BARGAINING RIGHTS AS THESE WERE AFFECTED BY THE APPLICANT'S APPLICATION FOR CERTIFICATION FOR EMPLOYEES OF COLUMBIA METAL ROLLING MILLS LIMITED (THE PREDECESSOR EMPLOYER TO ROSCO). THIS IS QUITE A DIFFERENT MATTER FROM THE HOLDING THAT THE APPLICANT'S APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF ROSCO WAS. WHERE ANOTHER UNION HAD GIVEN NOTICE PURSUANT TO SECTION 47A, UNTIMELY. IT IS THE FAILURE TO MAKE THIS DISTINCTION WHICH MAY HAVE LED THE INTERVENER TO THE VIEW THAT THE BOARD'S ENDORSEMENTS WERE INCONSISTENT.
- 9. There is, therefore, no inconsistency in the decisions of the Board appearing in the endorsements on the record, dated June 22nd and December 10th, 1965. The Board did not fail to give effect to its holding that, on certain assumed facts, the applicant's application for certification for employees of Rosco was untimely. Rather, the Board made its determination of the basis of all the relevant facts which were then properly before it. In reaching this conclusion, this panel of the Board has had regard only to the endorsements themselves and to the arguments of counsel directed thereto.
- 10. IN OUR OPINION, THIS IS NOT A CASE IN WHICH THE DIRECTION OF THE BOARD SHOULD BE VARIED OR REVOKED. THE REGISTRAR IS DIRECTED TO PROCEED WITH THE REPRESENTATION VOTE DIRECTED IN THE BOARD SENDORSEMENT, DATED DECEMBER 10TH, 1965.

11094-65-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION AFL.CIO.CLC. (APPLICANT) v. GUILDLINE INSTRUMENTS LTD. (RESPONDENT) AND GUILDLINE EMPLOYEES UNION (INTERVENER) AND GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

DECISION OF: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER. (MARCH 22, 1966).

- 1. The respondent by its letter of February 8th, 1966, has requested the Board to review its decision of December 29th, 1965, in this matter, wherein the Board certified the applicant as bargaining agent for "all employees of the respondent at Smiths Falls, save and except foremen, persons above the rank of foreman and office and sales staff."
- 2. The applicant had applied on November 16th, 1965, to be certified as bargaining agent for all employees in the bargaining unit described above and requested that a pre-hearing representation vote be taken.
- 3. At the time the application was made, the respondent and the intervener were parties to a collective agreement covering all employees of the respondent at Smiths Falls, save and except foremen, persons above the rank of foreman, office staff and salaried employees.
- 4. At the pre-hearing vote meeting convened by the Board's Examiner on November 25th, 1965, at which all the parties were represented, the respondent and the intervener agreed that the bargaining unit which had been proposed by the applicant was the appropriate unit for collective bargaining. This was the bargaining unit which the Board found to be appropriate in its decision of December 29th, 1965 and which the respondent now objects.
- 5. At the meeting held on November 25th, 1965, the number of employees on the List of employees filed by the respondent was not challenged and the parties further agreed that the number of employees on the respondent's list of employees as of the Date of making the application, in the unit proposed by the applicant, was fifty. They also agreed that there were fifty employees in the units originally proposed by the respondent and by the intervener.
- 6. THE APPLICANT FILED IN SUPPORT OF ITS APPLICATION THIRTY-SEVEN MEMBERSHIP DOCUMENTS FOR PERSONS WHO APPEARED ON THE RESPONDENT SLIST OF EMPLOYEES.
- 7. THE BOARD, ON NOVEMBER 30th, 1965, DIRECTED A PRE-HEARING REPRESENTATION VOTE AND, IN ACCORDANCE WITH THE BOARD SUSUAL PRACTICE IN PRE-HEARING VOTE CASES, FIXED A VOTING CONSTITUENCY IN SIMILAR TERMS TO THE BARGAINING UNIT WHICH APPEARED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.
- 8. At the taking of the vote in this matter, the revised voters list was reduced to forty-five, and of these persons twenty-four cast a ballot in favour of the applicant. On Dfember 29th, 1965, the Board accordingly certified the applicant as bargaining agent for the unit of employees described in the first paragraph hereof which had been agreed to by all the parties.
- 9. During the course of the collective bargaining following certification, it came to the respondent's attention that there were four persons who were "salaried employees" and who were excluded from the bargaining unit formerly represented by the intervener. These four persons were not included in the voting constituency

AND DID NOT ATTEMPT TO CAST A BALLOT, HOWEVER, THEY WERE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE BOARD'S DECISION OF DECEMBER 29TH. 1965.

- 10. THE RESPONDENT NOW ARGUES THAT IF THE FOUR SALARIED EMPLOYEES HAD BEEN ADDED TO THE FORTY-FIVE VOTERS ON THE REVISED VOTERS? LIST, THE APPLICANT WOULD BE IN THE POSITION WHERE ONLY TWENTY-FOUR PERSONS VOTED IN FAVOUR OF THE APPLICANT OUT OF A TOTAL OF FORTY-NINE AND ACCORDINGLY THE APPLICANT WOULD HAVE RECEIVED LESS THAN FIFTY PER CENT OF THE VOTE AND THEREFORE WOULD NOT BE ENTITLED TO BE CERTIFIED FOR ALL EMPLOYEES IN THE BARGAINING UNIT.
- 11. THE QUESTION NOW BEFORE THE BOARD IS WHETHER THE BOARD SHOULD REVOKE ITS DECISION OF DECEMBER 29TH, 1965, AND DISMISS THE APPLICATION OR SHOULD VARY ITS DECISION OF DECEMBER 29TH, 1965, AND EITHER EXCLUDE SALARIED EMPLOYEES FROM THE BARGAINING UNIT OR DIRECT A FURTHER VOTE TO PERMIT THE SALARIED EMPLOYEES TO CAST A BALLOT.
- 12. THE SITUATION IN WHICH THE RESPONDENT NOW FINDS ITSELF WAS CREATED BY ITS OWN ERROR OR OMISSION. CERTAINLY THE RESPONDENT CANNOT BE HEARD TO COMPLAIN THAT IT WAS NOT AWARE THAT IT EMPLOYED FOUR SALARIED EMPLOYEES WHO WERE SPECIFICALLY EXCLUDED FROM THE BARGAINING UNIT FORMERLY REPRESENTED BY THE INTERVENER.
- 13. HAD THE FACT BEEN BROUGHT TO THE ATTENTION OF THE BOARD THAT THERE WERE SUCH PERSONS, THE BOARD WOULD HAVE DIRECTED A VOTE BETWEEN THE APPLICANT AND THE INTERVENER IN THE VOTING CONSITUENCY DESCRIBED IN THE BOARD'S DECISION OF NOVEMBER 30TH, 1965, AND, IN A SEPARATE VOTING CONSTITUENCY, THE BOARD WOULD HAVE ASKED THE FOUR SALARIED EMPLOYEES TO INDICATE WHETHER THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT. SINCE THE APPLICANT RECEIVED A MAJORITY OF VOTES IN THE VOTING CONSTITUENCY DESCRIBED IN THE BOARD'S DECISION OF NOVEMBER 30TH, 1965, THE APPLICANT IS ENTITLED TO DISPLACE THE INTERVENER AS BARGAINING AGENT FOR THAT GROUP OF EMPLOYEES.
- 14. In determinging whether the Board should vary or revoke its decision of December 29th, 1965, the Board must take the following factors into consideration. This situation was created by the respondent in that the list of employees considered by the parties at the pre-hearing vote meeting on November 25, 1965, had been filed by the respondent as a list of employees in the bargaining unit proposed by the applicant and the respondent failed to include on the list the four salaried employees. The respondent agreed to a bargaining unit being described in the terms of the Board's decision of December 29th, 1965. The respondent has allowed over 2 1/2 months to elapse since November 25th, 1965, before bringing to the attention of the Board the fact that the four salaried employees were omitted from the list it filed in this matter. None of the four salaried employees, up to the date hereof, have objected to the description of the Bargaining unit. The applicant had more than fifty-five per cent of the employees in the bargaining unit (including the four salaried employees) as members at the time the application was made.
- 15. In all these circumstances, the Board does not consider it advisable to vary or revoke its decision of December 25th, 1965, in this matter.
- 16. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

DECISION OF: BOARD MEMBER H. F. IRWIN. (MARCH 22, 1966)

| DISSENT.

In the circumstances of this case, I would have amended the description of the bargaining unit as set out in the Board's endorsement and certificate dated December 29, 1965 by adding at the end the words "and salaried employees". This would make the bargaining unit identical with the voting constituency determined by the Board as set out in the official notice of the Board posted in the plant in Form 48 and dated December 1, 1965.

While the four (4) salaried employees were properly excluded from the voting constituency because of their exclusion from the bargaining unit of an existing collective agreement between the employer and the intervener, there is no evidence before the Board of their membership or non-membership in the applicant union or any expressed desire on the part of these employees to have or not to have the applicant union represent them for the purposes of collective bargaining with their employer. Consequently, they should not be included in the bargaining unit for which the applicant union was certified as bargaining agent. To do so, means that on the evidence of 24 ballots cast in favour of the applicant union in a voting constituency comprising 45 employees, the applicant union has been certified as bargaining agent in a bargaining unit comprising 49 employees of the respondent on the day of the vote. This is not more than 50 per cent of the said employees as required by the provisions of section 7 (3) of the Labour Relations 40.

11438-65-R: WINDSOR TYPOGRAPHICAL UNION, No. 553 (APPLICANT) v. THE POST PRINTING COMPANY LTD., A DIVISION OF THOMSON NEWSPAPERS LIMITED (LEAMINGTON) (RESPONDENT).

BEFORE: J. D. O'SHEA, DEPUTY VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND D. McDermott.

DECISION OF THE BOARD: (March 30, 1966).

- 1. The respondent, by its letter dated March 17th, 1966, requested the Board to review its decision of March 11th, 1966, in this matter and exclude from the bargaining unit defined in that decision "persons regularly employed for not more than 24 hours per week and students hired for the school vacation period".
- 2. THE RESPONDENT IN ITS REPLY CLAIMED THAT THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING, WHICH DIFFERED FROM THE UNIT PROPOSED BY THE APPLICANT, SHOULD NOT INCLUDE THE CLASSIFICATIONS IT NOW SEEKS TO EXCLUDE.
- 3. However, at the hearing in this matter when the Board entertained the representations of the parties as to the description of the bargaining unit, the parties agreed to the description contained in paragraph 3 of the Board's decision of March 11th, 1966, with the exception of the exclusions of non-working foreman. While the respondent requested the exclusion of "foreman" it agreed that the normal exclusion in this craft bargaining unit was "non-working foreman". The

BOARD THEREFORE DETERMINED THAT "NON-WORKING FOREMAN" WAS THE APPROPRIATE EXCLUSION IN THIS CASE.

- 4. IN AGREEING TO THIS DESCRIPTION OF THE BARGAINING UNIT THE PARTIES AGREED TO DELETE ANY REFERENCE TO A MAILING ROOM. THE PARTIES FURTHER AGREED TO THE EXCLUSIONS CONTAINED IN PARAGRAPH 4 OF THE BOARD'S DECISION.
- 5. THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT INDICATES THAT AT THE TIME THE APPLICATION WAS MADE THERE WERE NO PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THERE WERE NO STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. THE BOARD HAS NO EVIDENCE BEFORE IT FROM WHICH IT COULD FIND THERE IS A HISTORY OF THE RESPONDENT EMPLOYING PERSONS IN THE CLASSIFICATIONS WHICH THE RESPONDENT NOW SEEKS TO EXCLUDE.
- 6. WHILE IT MAY BE THAT THE RESPONDENT NEVER CONSCIOUSLY INTENDED TO ABANDON ITS REQUEST FOR THE EXCLUSION OF 24 HOUR PERSONS AND STUDENTS, THE BOARD IS OF OPINION THAT IT DID IN FACT ABANDON THE REQUEST WHEN IT AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT WHICH MADE NO REFERENCE TO THE EXCLUSION OF SUCH PERSONS, ESPECIALLY SINCE EXCLUSIONS FORM THE BARGAINING UNIT WERE EXTENSIVELY DISCUSSED AT THE HEARING.
- 7. It is the Board's usual practice to exclude 24 hour persons and students from the full time bargaining unit if the employer has a history of employing such persons, when one of the parties makes a request for such an exclusion.
- 8. IN THIS CASE, HOWEVER, THERE IS NO EVIDENCE THAT THE RESPONDENT HAD A HISTORY OF EMPLOYING SUCH PERSONS AND IF SUCH EVIDENCE IS AVAILABLE NOW, IT WAS CERTAINLY AVAILABLE AT THE HEARING IN THIS MATTER.
- 9. HAVING REGARD TO ALL THE FACTORS SET OUT ABOVE AND THE FACT THAT THE RESPONDENT DOES NOT ALLEGE THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND ESPECIALLY THE FACT THAT THE RESPONDENT AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF MARCH 11TH, 1966, IN THIS MATTER.
- 10. THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

## STATISTICAL TABLES FOR MARCH 1966

# TABLE 1

# APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

			Number Filed			
			12 Months o 1965-66	F FISCAL YEAR 1964-65		
i.	CERTIFICATION	104	987	951		
11.	DECLARATION TERMINATING BARGAINING RIGHTS	2	68	107		
111.	Declaration of Successor Status	-	25	8		
IV.	Declaration That Strike Unlawful	2	50	36		
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	Ц	5		
VI.	CONSENT TO PROSECUTE	2	91	68		
V11.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	113	159		
VIII.	MISCELLANEOUS	133 —	<u>54</u> 1392	<u>55</u> 1389 <del></del>		

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number			
	March 1s 1966	T 12 Months of 1965-66		
HEARINGS AND CONTINUATION OF		7700	77/0	
HEARINGS BY THE BOARD	87	1130	1162	

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

TABLE III

			Number Disposed of			
		March 1966	1st 12 Months 1965-66	OF FISCAL YEAR 1964-65		
1.	CERTIFICATION	108	998	910		
11.	Declaration Terminating Bargaining Rights	14	70	110		
111.	Declaration of Successor Status	1	. 29	8		
1 V .	Declaration That Strike Unlawful	2	50	36		
٧.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	L <sub>+</sub>	5		
VI.	CONSENT TO PROSECUTE	5	91	71		
VII.	Complaint of Unfair Practice in Employment					
	(SECTION 65)	8	114	167		
VIII.	MISCELLANEOUS	4	70	30		
		OTAL 142	1426	1337		

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

		Number of Applications  March 1st 12 Mths Fiscal Yr.  1966 1965-66 1964-65			MARC	Number of Employees*  March 1st 12 Mths Fiscal Yr. 1966 1965-66 1964-65		
1,•	CERTIFICATION		1/0/ 00	1701-07		170) 00	1701 0)	
	Granted Dismissed Withdrawn	72 24 12	731 180 <u>87</u>	666 1 <i>5</i> 8 <u>86</u>	275 35 81	27189	19497 6761 <u>3360</u>	
	TOTAL	108	998 <del></del>	910	392	52012	29618	
11.	TERMINATION OF BARGAINING RIGHTS							
	Granted Dismissed Withdrawn	3 11 	29 36 <u>5</u>	51 54 	3		1128 1221 105	
	TOTAL	14	70	110	11	2 2693	2454	

<sup>\*</sup>THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE

AND DISPOSITION (CONTINUED)

			Number of Applications		
			March 1st 1966	12 Months 1965-66	FISCAL YEAR 1964-65
111.	DECLARATION THAT STRIKE UNLAWFUL				
	Granted Dismissed Withdrawn		- - 2	.8 .4 .38	13 5 18
		TOTAL	2 =	50 <u>—</u>	36 =
1 V •	DECLARATION THAT LOCKOUT UNLAWFUL				
	GRANTED Dismissed Withdrawn	TOTAL	- - -	- - - 4	1 1 2 5
٧.	CONSENT TO PROSECUTE				
	Granted Dismissed Withdrawn		<u>-</u> <u>-</u> <u>-</u>	31 15 45	13 17 <u>41</u>
		TOTAL	5	91	71

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED

OF BY THE ONTARIO LABOUR RELATIONS BOARD

		Number of Votes			
		MARCH 1966	1st 12 Months 1965-66		
CERTIFICATION AFTER VOTE*					
PRE-HEARING VOTE		_	24	23	
POST-HEARING VOTE		2	33	36	
BALLOTS NOT COUNTED		-	-	-	
DISMISSED AFTER VOTE					
PRE-HEARING VOTE		1	7	8	
POST-HEARING VOTE		6	42	53	
BALLOTS NOT COUNTED			_3	_1	
	TOTAL	9	109	121	
				Management of the last of the	

<sup>\*</sup>INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLICANT OR INTERVENER IS CERTIFIED.

# TABLE VI REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

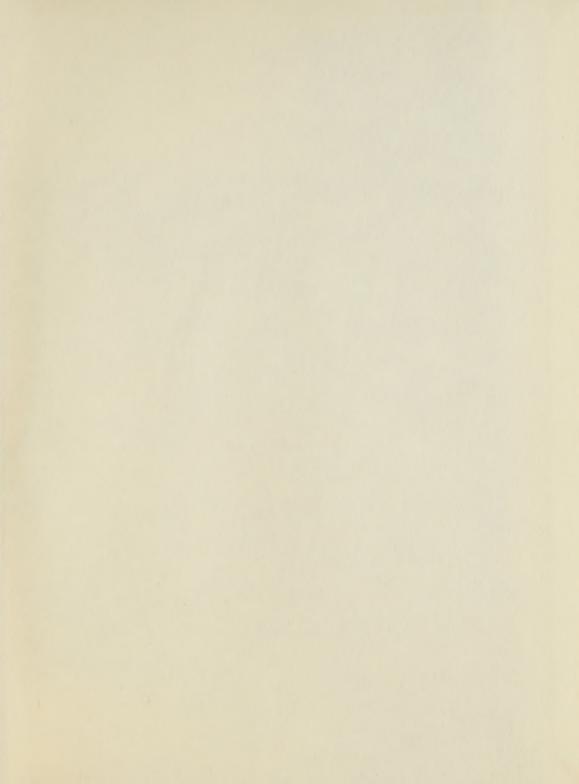
				Number of Votes		
					т 12 Months 1965-66	FISCAL YEAR 1964-65
*Respondent	UNION	Successful		_	1	
		UNSUCCESSFUL		1	21	14
			TOTAL	1	22	14

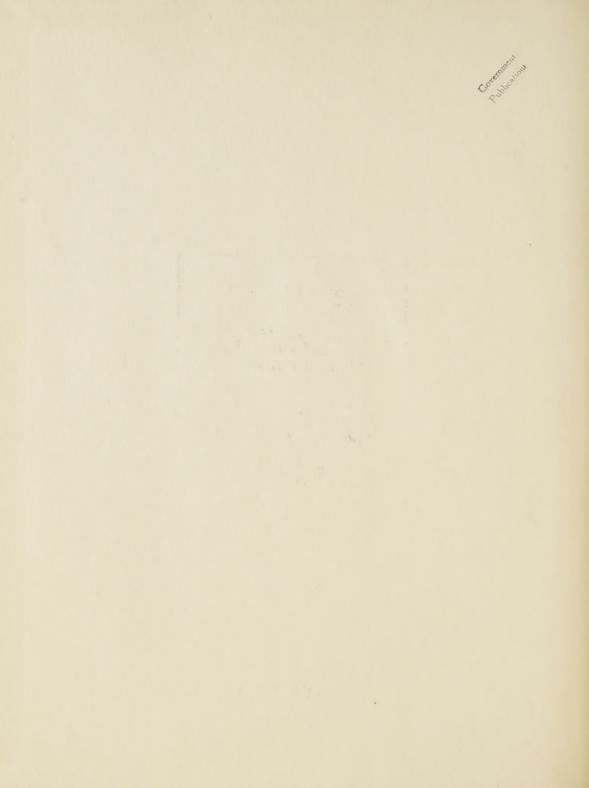
<sup>\*</sup>IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.











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